

# SENATE BILL 1007

K3, K4, C1

6lr1259  
CF HB 1378

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By: ~~Senator Peters~~ Senators Peters, Astle, Benson, Currie, Feldman, Guzzone, Kasemeyer, Kelley, King, Klausmeier, Madaleno, Manno, McFadden, Middleton, Pugh, and Rosapepe

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Assigned to: Rules

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 23, 2016

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## CHAPTER \_\_\_\_\_

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 the Board to enter into a certain agreement to borrow certain  
14 funds; requiring the Board to take certain actions to ensure that the Program is not  
15 preempted by federal law; requiring the Board to establish certain procedures and  
16 disclosures; requiring the Board to design and disseminate certain information to  
17 employers and employees; requiring the Board to enter into a certain agreement  
18 delegating the administration of the Trust to a third-party administrator; limiting  
19 the type of savings arrangements offered by the Board to payroll deposit IRA  
20 arrangements; requiring the Board to implement a range of investment options and  
21 providers and to select a default investment option; requiring the Board to consider  
22 certain information when selecting investment options; authorizing the Board to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 provide investment options that provide certain income distributions; limiting the  
 2 ongoing administrative expenses of the Program from exceeding a certain amount;  
 3 prohibiting the Board from offering investment options that conflict with federal law;  
 4 prohibiting the Board from offering investment options that could result in certain  
 5 liabilities; requiring a covered employer to establish a certain payroll deposit  
 6 retirement savings arrangement, and to automatically enroll covered employees in  
 7 the Program; prohibiting a covered employer from receiving a certain fee waiver if  
 8 the covered employer is not in compliance with certain provisions of this Act;  
 9 establishing that compliance with this Act does not create a certain fiduciary  
 10 obligation; establishing that a covered employee may opt out of the Program, and  
 11 re-enroll if the employee has opted out; authorizing certain ~~eligible~~ employees to  
 12 participate in the Program in a certain manner; requiring the Board to establish a  
 13 default employee contribution amount; providing for the method of payment of  
 14 certain expenses incurred by the Board as a result of administering the Program;  
 15 requiring the Board to adopt certain regulations; prohibiting certain ~~employers~~  
 16 employers, taxpayers, and the State from incurring certain liabilities regarding the  
 17 Program and the Trust; requiring certain conditions to be met before any plan, trust,  
 18 administrative arrangement, or investment offering may be implemented; providing  
 19 for the expiration of terms of certain initial Board members; waiving a certain  
 20 ~~processing~~ fee for the filing of certain documents by certain business entities under  
 21 certain circumstances; prohibiting the waiver of a certain filing fee under this Act  
 22 until the Program is open for enrollment; defining certain terms; and generally  
 23 relating to the Maryland Small Business Retirement Savings Program and 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  
 30 Article – Corporations and Associations  
 31 Section 1–203(b)(14)  
 32 Annotated Code of Maryland  
 33 (2014 Replacement Volume and 2015 Supplement)

34 BY adding to  
 35 Article – Labor and Employment  
 36 Section 12–101 through 12–502 to be under the new title “Title 12. Maryland Small  
 37 Business Retirement Savings Program and Trust”  
 38 Annotated Code of Maryland  
 39 (2008 Replacement Volume and 2015 Supplement)

#### 40 Preamble

41 WHEREAS, It shall be the policy of the State to assist the Maryland workforce in  
 42 identifying the need to save for retirement, learning about products and services available

1 in the private sector to accumulate retirement savings, promoting the efforts of employers  
2 to adopt retirement plans for employees, and assisting employees who do not have access  
3 to an employer-offered savings arrangement to initiate individual retirement accounts; and

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

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

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 FILING FEE~~ FOR A BUSINESS ENTITY DESCRIBED UNDER PARAGRAPH  
4 (3)(II) OF THIS SUBSECTION FOR EACH YEAR THAT THE ENTITY PROVIDES EVIDENCE  
5 TO THE DEPARTMENT THAT:

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

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

15 Article – Labor and Employment

16 TITLE 12. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM AND  
17 TRUST.

18 SUBTITLE 1. DEFINITIONS.

19 12-101.

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

22 (B) “BOARD” MEANS THE MARYLAND SMALL BUSINESS RETIREMENT  
23 SAVINGS BOARD.

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

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

28 (I) AN EMPLOYEE COVERED UNDER THE FEDERAL RAILWAY  
29 LABOR ACT (45 U.S.C. SEC. 151) OR AN EMPLOYEE ENGAGED IN INTERSTATE  
30 COMMERCE SO AS NOT TO BE SUBJECT TO THE LEGISLATIVE POWERS OF THE STATE,

1 EXCEPT INSOFAR AS APPLICATION OF THIS TITLE IS AUTHORIZED UNDER THE  
2 UNITED STATES CONSTITUTION OR LAWS OF THE UNITED STATES;

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

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

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

13 (D) (1) "~~ELIGIBLE~~ COVERED EMPLOYER" MEANS A PERSON ENGAGED IN  
14 A BUSINESS, AN INDUSTRY, A PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN  
15 THE STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT:

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

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

21 (2) "~~ELIGIBLE~~ COVERED EMPLOYER" DOES NOT INCLUDE:

22 (I) THE FEDERAL GOVERNMENT;

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

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

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

27 (V) AN EMPLOYER THAT CURRENTLY OFFERS AN  
28 ~~EMPLOYER SPONSORED RETIREMENT PLAN~~ EMPLOYER-OFFERED SAVINGS  
29 ARRANGEMENT THAT WAS ESTABLISHED SEPARATELY FROM THE REQUIREMENTS  
30 OF THIS TITLE;

1 (VI) AN EMPLOYER THAT, AT ANY TIME DURING THE PRECEDING  
 2 2 CALENDAR YEARS, ~~TERMINATED AN EMPLOYER-SPONSORED RETIREMENT PLAN~~  
 3 OFFERED AN EMPLOYER-OFFERED SAVINGS ARRANGEMENT THAT WAS  
 4 ESTABLISHED SEPARATELY FROM THE REQUIREMENTS OF THIS TITLE; OR

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

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

10 (F) "MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM"  
 11 MEANS A RETIREMENT SAVINGS PROGRAM ESTABLISHED ~~AND OFFERED~~ BY THE  
 12 MARYLAND SMALL BUSINESS RETIREMENT SAVINGS BOARD UNDER THIS TITLE.

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

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

21 (I) "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT" MEANS AN  
 22 ARRANGEMENT BY WHICH ~~AN~~ A COVERED EMPLOYER REMITS PAYROLL DEDUCTION  
 23 CONTRIBUTIONS OF PARTICIPATING EMPLOYEES TO ~~A RETIREMENT SAVINGS~~  
 24 ~~PROGRAM~~ THE PROGRAM.

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

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

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

30 **12-201.**

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

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

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

3           **(2) THE SECRETARY OF LABOR, LICENSING, AND REGULATION, OR**  
4 **THE SECRETARY'S DESIGNEE; AND**

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

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

9                   **(II) THREE MEMBERS, APPOINTED BY THE PRESIDENT OF THE**  
10 **SENATE; AND**

11                   **(III) THREE MEMBERS, APPOINTED BY THE SPEAKER OF THE**  
12 **HOUSE OF DELEGATES.**

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

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

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

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

21           **(D) THE BOARD SHALL ELECT A CHAIR FROM AMONG THE MEMBERS OF THE**  
22 **BOARD.**

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

25 **12-202.**

26           **(A) THE BOARD SHALL MEET AT THE TIMES AND PLACES THAT THE BOARD**  
27 **DETERMINES.**

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

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

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

12 12-203.

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

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

19 (2) ~~BY INVESTING~~ SELECTING INVESTMENT OPTIONS OR PROGRAMS  
20 THAT WILL INVEST WITH THE CARE, SKILL, PRUDENCE, AND DILIGENCE UNDER THE  
21 CIRCUMSTANCES THEN PREVAILING THAT A PRUDENT PERSON ACTING IN A LIKE  
22 CAPACITY AND FAMILIAR WITH THOSE MATTERS WOULD USE IN THE CONDUCT OF  
23 AN ENTERPRISE OF A LIKE CHARACTER AND WITH LIKE AIMS.

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

27 (2) THE INVESTMENT POLICY SHALL CONSIDER INVESTMENT  
28 OPTIONS OR PROGRAMS THAT WILL SEEK TO MITIGATE RISK BY MAINTAINING A  
29 BALANCED INVESTMENT PORTFOLIO THAT PROVIDES ASSURANCE THAT NO SINGLE  
30 INVESTMENT OR CLASS OF INVESTMENTS WILL HAVE A DISPROPORTIONATE IMPACT  
31 ON THE TOTAL PORTFOLIO.

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



1 12-204.

2 (A) IN ADDITION TO THE POWERS AND DUTIES SET FORTH ELSEWHERE IN  
3 THIS TITLE, THE BOARD ~~MAY~~:

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

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

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

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

13 (5) SHALL EVALUATE AND ESTABLISH THE PROCESS FOR AN  
14 ~~ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER TO CONTRIBUTE A PORTION~~  
15 ~~OF THE EMPLOYEE'S SALARY OR WAGES TO THE PROGRAM FOR AUTOMATIC~~  
16 ~~DEPOSIT OF THE CONTRIBUTIONS~~ EMPLOYEE TO CONTRIBUTE AUTOMATICALLY TO  
17 THE PROGRAM;

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

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

28 (8) SHALL EVALUATE AND ESTABLISH ~~THE PROCESS FOR A~~  
29 ~~PARTICIPATING EMPLOYER TO USE THE PROGRAM TO REMIT EMPLOYEES'~~  
30 ~~CONTRIBUTIONS TO THEIR INDIVIDUAL RETIREMENT ACCOUNTS ON BEHALF OF THE~~  
31 ~~EMPLOYEES~~ A RANGE OF INVESTMENT OPTIONS, INCLUDING A DEFAULT  
32 INVESTMENT SELECTION FOR EMPLOYEES' PAYROLL DEPOSIT IRAS;

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

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

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

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

16           **(13) SHALL DETERMINE THE ALLOCATION OF ADMINISTRATIVE FEES**  
17 **~~TO EACH INDIVIDUAL RETIREMENT ACCOUNT ON A PRO RATA BASIS, NOT TO EXCEED~~**  
18 **~~1% OF THE TOTAL BALANCE IN THE TRUST~~ INDIVIDUAL RETIREMENT ACCOUNTS;**

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

23           **(15) ~~IF NECESSARY,~~ SHALL DETERMINE THE ELIGIBILITY OF AN**  
24 **EMPLOYER, EMPLOYEE, OR ANY OTHER INDIVIDUAL TO PARTICIPATE IN THE**  
25 **PROGRAM; AND**

26           **(16) MAY EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN**  
27 **~~ELIGIBLE~~ EMPLOYEE OF A NONPARTICIPATING EMPLOYER MAY ENROLL IN AND**  
28 **MAKE CONTRIBUTIONS TO THE PROGRAM; AND**

29           **~~(17) DETERMINE INTEREST RATES TO BE ALLOCATED TO PROGRAM~~**  
30 **~~ACCOUNTS.~~**

31           **(B) THE BOARD SHALL ADOPT REGULATIONS AND TAKE ANY OTHER ACTION**  
32 **NECESSARY TO IMPLEMENT THIS TITLE CONSISTENT WITH THE INTERNAL REVENUE**  
33 **CODE AND REGULATIONS ISSUED IN ACCORDANCE WITH THE INTERNAL REVENUE**  
34 **CODE TO ENSURE THAT THE PROGRAM MEETS ALL CRITERIA FOR FEDERAL TAX**  
35 **DEFERRAL OR TAX-EXEMPT BENEFITS OR BOTH.**

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

3 **12-205.**

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

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

9                   **(2) THE ~~PACKET~~ INFORMATION PROVIDED SHALL INCLUDE**  
10 **BACKGROUND INFORMATION ON THE PROGRAM AND APPROPRIATE DISCLOSURES**  
11 **FOR ~~EMPLOYERS~~.**

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

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

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

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

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

20                   **~~(5)~~ (V) HOW TO OBTAIN ADDITIONAL INFORMATION ON THE**  
21 **PROGRAM.**

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

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

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

28                   **(3) THE PROGRAM IS NOT AN ~~EMPLOYER-SPONSORED RETIREMENT~~**  
29 **~~PLAN~~ EMPLOYER-OFFERED SAVINGS ARRANGEMENT; AND**

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

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

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

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

13 ~~(F) (1) THE EMPLOYEE INFORMATION PACKET SHALL BE MADE~~  
14 ~~AVAILABLE TO EMPLOYERS THROUGH THE BOARD AND SUPPLIED TO EMPLOYEES~~  
15 ~~AT THE TIME OF HIRING.~~

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

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

23 (D) THE BOARD SHALL ESTABLISH PROCEDURES FOR:

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

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

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

31 12-206.

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

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

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

11 **12-301.**

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

14 (B) (1) THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST  
 15 SHALL BE ADMINISTERED BY THE BOARD FOR THE PURPOSE OF PROMOTING  
 16 GREATER RETIREMENT SAVINGS FOR MARYLAND PRIVATE SECTOR EMPLOYEES IN  
 17 A CONVENIENT, VOLUNTARY, LOW-COST, AND PORTABLE MANNER.

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

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

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

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

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

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

27 (E) ~~(1)~~ THE BOARD SHALL ESTABLISH, BY REGULATION, DATES WHEN AN  
 28 EMPLOYER SHALL DEPOSIT EMPLOYEE CONTRIBUTIONS.

29 ~~(2) THE BOARD MAY NOT ESTABLISH A DEADLINE UNDER~~  
 30 ~~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~~

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

**SUBTITLE 4. MARYLAND 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.**

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

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

7 12-402.

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

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

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

18 ~~(3) AN ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER WHO~~  
19 ~~ELECTS TO OPT OUT OF THE PROGRAM AND WHO SUBSEQUENTLY WANTS TO~~  
20 ~~PARTICIPATE THROUGH THE EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS~~  
21 ~~ARRANGEMENT MAY ENROLL IN A MANNER PRESCRIBED BY THE BOARD~~

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

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

29 (C) EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO SET UP ANY  
30 TYPE OF ~~EMPLOYER SPONSORED RETIREMENT PLAN~~ EMPLOYER-OFFERED  
31 SAVINGS ARRANGEMENT, SUCH AS A DEFINED BENEFIT PLAN OR A 401(K),  
32 SIMPLIFIED EMPLOYEE PENSION (SEP) PLAN, OR SAVINGS INCENTIVE MATCH  
33 PLAN FOR EMPLOYEES (SIMPLE) PLAN, OR TO OFFER AN AUTOMATIC  
34 ENROLLMENT PAYROLL DEDUCTION IRA, INSTEAD OF HAVING A PAYROLL DEPOSIT

1 RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN  
2 THE PROGRAM.

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

7 12-403.

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

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

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

17 ~~(E)~~ (D) A PARTICIPATING EMPLOYEE MAY TERMINATE PARTICIPATION IN  
18 THE PROGRAM AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD ~~AND~~  
19 ~~THEREAFTER BY MAKING A NOTATION ON THE OPT-OUT FORM.~~

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

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

26 SUBTITLE 5. LIMITATION OF LIABILITY.

27 12-501.

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

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



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

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

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

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

9 **12-502.**

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

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

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

21           (1) three members in 2018;

22           (2) three members in 2019; and

23           (3) three members in 2020.

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

33           SECTION 4. AND BE IT FURTHER ENACTED, That the filing fee under §  
34 1-203(b)(3)(ii) of the Corporations and Associations Article may not be waived in

1 accordance with this Act until the Maryland Small Business Savings Program is open for  
2 enrollment.

3 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 July 1, 2016.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
President of the Senate.

\_\_\_\_\_  
Speaker of the House of Delegates.