

Maryland Code

LABOR AND EMPLOYMENT

Title 12. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM AND TRUST (§§ 12-101 to 12-502)

Subtitle 1. DEFINITIONS

Section 12-101. Definitions

Section 12-101. Definitions

- (a) In this title the following words have the meanings indicated.
- (b) "Board" means the Maryland Small Business Retirement Savings Board.
- (c)
 - (1) "Covered employee" means an individual who is employed by a covered employer.
 - (2) "Covered employee" does not include:
 - (i) an employee covered under the federal Railway Labor Act (45 U.S.C. Sec. 151) or an employee engaged in interstate commerce so as not to be subject to the legislative powers of the State, except insofar as application of this title is authorized under the United States Constitution or laws of the United States;
 - (ii) an employee eligible to participate in a qualifying retirement plan;
 - (iii) an employee covered by a valid collective bargaining agreement that expressly provides for a multi-employer retirement plan described in 26 U.S.C. § 414(f); or
 - (iv) an employee who is under the age of 18 years before the beginning of the calendar year.
- (d)
 - (1) "Covered employer" means a person engaged in a business, an industry, a profession, a trade, or any other enterprise in the State, whether for profit or not for profit, that pays the covered employer's employees through a payroll system or service.
 - (2) "Covered employer" does not include:
 - (i) the federal government;
 - (ii) the State or any unit of the State;
 - (iii) a county or any unit of the county;
 - (iv) a municipal corporation or any unit of the municipal corporation;
 - (v) an employer that currently offers an employer-offered savings arrangement that was established separately from the requirements of this title;
 - (vi) an employer that, at any time during the preceding 2 calendar years, offered an employer-offered savings arrangement that was established separately from the requirements of this title; or
 - (vii) an employer that has not been in business at all times during the current calendar year and the preceding calendar year.
- (e) "Employer-offered savings arrangement" includes any of the following:
 - (1) an IRA;

- (2) a defined benefit plan;
 - (3) a 401(k);
 - (4) a Simplified Employee Pension (SEP) plan;
 - (5) a Savings Incentive Match Plan for Employees (SIMPLE) plan; or
 - (6) another arrangement, if in compliance with federal law, that the Board specifies by regulation.
- (f) "IRA" means an individual retirement account or an individual retirement annuity under *26 U.S.C. § 408(a) or (b)*.
- (g) "Maryland Small Business Retirement Savings Program" means a retirement savings program established by the Maryland Small Business Retirement Savings Board under this title.
- (h) "Participating employee" means an employee that is participating in the Program through a payroll deposit retirement savings arrangement in accordance with regulations adopted by the Board.
- (i) "Participating employer" means a covered employer that provides a payroll deposit retirement savings arrangement under this title for covered employees.
- (j) "Payroll deposit retirement savings arrangement" means an arrangement by which a covered employer remits payroll deduction contributions of participating employees to the Program.
- (k) "Program" means the Maryland Small Business Retirement Savings Program established under this title.
- (l) "Trust" means the Maryland Small Business Retirement Savings Trust established under this title.

Amended by 2018 Md. Laws, Ch. 596, Sec. 1, eff. 6/1/2018. Added by 2016 Md. Laws, Ch. 324, Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323, Sec. 1, eff. 7/1/2016.

Subtitle 2. ESTABLISHMENT; POWERS AND DUTIES OF BOARD

Section 12-201. Maryland Small Business Retirement Savings Board established

Section 12-202. Meetings; staffing; finances

Section 12-203. Duties

Section 12-204. Additional powers and duties

Section 12-205. Required disclosures

Section 12-206. Reports and audits

Section 12-201. Maryland Small Business Retirement Savings Board established

- (a)
- (1) There is a Maryland Small Business Retirement Savings Board.
 - (2) The Board is a body politic and corporate and is an instrumentality of the State.
 - (3)
 - (i) Except as provided in subparagraphs (ii) and (iii) of this subsection, the Board is not subject to any law, including § 6-106 of the State Government Article, that affects governmental units.

- (ii) The Board is subject to:
 - 1. the Open Meetings Act; and
 - 2. the Public Information Act.

(iii) The Board and its employees are subject to the public ethics law.

(b) The Board consists of the following members:

- (1) the State Treasurer, or the State Treasurer's designee;
- (2) the Secretary of Labor, or the Secretary's designee; and
- (3) nine members with expertise in retirement programs and benefits, investments, financial systems and controls, or small business, appointed as follows:
 - (i) three members, appointed by the Governor;
 - (ii) three members, appointed by the President of the Senate; and
 - (iii) three members, appointed by the Speaker of the House of Delegates.

(c)

- (1) The term of a member is 4 years.
- (2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 2016.
- (3) At the end of a term a member continues to serve until a successor is appointed and qualifies.
- (4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) The Board shall elect a chair from among the members of the Board.

(e) The appointing authority may remove a member whom the appointing authority appointed, for incompetence or misconduct.

Amended by 2018 Md. Laws, Ch. 596, Sec. 1, eff. 6/1/2018. Added by 2016 Md. Laws, Ch. 324, Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323, Sec. 1, eff. 7/1/2016.

Section 12-202. Meetings; staffing; finances

(a) The Board shall meet at the times and places that the Board determines.

(b)

- (1) The Board may employ a staff and may hire consultants, administrators, and other professionals as necessary to help implement, maintain, and administer the Program and the Trust.
- (2) All expenses, including employee costs, incurred to implement, maintain, and administer the Program and the Trust shall be paid from money collected by or for the Program or the Trust.
- (3) Consistent with its fiduciary duties, the Board may enter into an agreement to borrow funds from the State or any other entity to provide funding for the operation of the Program until the Program can generate sufficient funding for operations through fees assessed on Program accounts.

Added by 2016 Md. Laws, Ch. 324, Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323, Sec. 1, eff. 7/1/2016.

Section 12-203. Duties

(a) The Board, the Program administrator, and staff shall discharge the duties with respect to the Trust solely in the interest of the Program participants as follows:

(1) for the exclusive purposes of providing benefits to Program participants and defraying reasonable expenses of administering the Program; and

(2) by selecting investment options or programs that will invest with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(b)

(1) The Board shall prepare, adopt, and annually review a written statement of investment policy that includes a risk management and oversight program.

(2) The investment policy shall consider investment options or programs that will seek to mitigate risk by maintaining a balanced investment portfolio that provides assurance that no single investment or class of investments will have a disproportionate impact on the total portfolio.

(3) The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the Program investment portfolio and ensure that the risks taken are prudent and properly managed.

Amended by 2018 Md. Laws, Ch. 596, Sec. 1, eff. 6/1/2018. Added by 2016 Md. Laws, Ch. 324, Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323, Sec. 1, eff. 7/1/2016.

Section 12-204. Additional powers and duties

(a) In addition to the powers and duties set forth elsewhere in this title, the Board:

(1) shall cause the Program or payroll deposit IRA arrangements established under the Program to be designed, established, and operated;

(2) shall appoint a Program administrator and determine the duties of the Program administrator;

(3) shall employ staff as necessary and set the compensation of the staff;

(4) shall make provisions for the payment of costs of administration and operation of the Trust;

(5) shall evaluate and establish the process for an employee to contribute automatically to the Program;

(6) shall evaluate and establish the process for a participating employer to provide a payroll deposit retirement savings arrangement for covered employees and to forward the employee contribution and related information to the Program or its agents, which may include financial services companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or other arrangements authorized by this title;

(7) shall design and establish the process for the enrollment of Program participants;

(8) shall evaluate and establish a range of investment options, including a default investment selection for employees' payroll deposit IRAs;

(9) may procure insurance against any loss in connection with the property, assets, or activities of the Trust, and secure private underwriting and reinsurance to manage risk;

(10) shall procure insurance indemnifying each member of the Board from personal loss or liability resulting from a member's action or inaction as a member of the Board;

(11) shall set minimum and maximum employee contribution levels in accordance with contribution limits set for IRAs by the Internal Revenue Code;

(12) may arrange for collective, common, and pooled investment of assets of the Program or arrangements, including investments in conjunction with other funds with which those assets are authorized to be collectively invested, with a view to saving costs through efficiencies and economies of scale;

(13) shall determine the allocation of administrative fees to individual retirement accounts;

(14) shall explore and establish investment options that offer employees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the State;

(15) shall determine the eligibility of an employer, employee, or any other individual to participate in the Program; and

(16) may evaluate and establish the process by which a noncovered employer, an employee of a nonparticipating employer, or a self-employed individual may enroll in and make contributions to the Program.

(b) The Board shall adopt regulations and take any other action necessary to implement this title consistent with the Internal Revenue Code and regulations issued in accordance with the Internal Revenue Code to ensure that the Program meets all criteria for federal tax deferral or tax-exempt benefits or both.

(c) The Board shall take any action necessary to ensure that the Program is not preempted by federal law.

Amended by 2018 Md. Laws, Ch. 596, Sec. 1, eff. 6/1/2018. Added by 2016 Md. Laws, Ch. 324, Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323, Sec. 1, eff. 7/1/2016.

Section 12-205. Required disclosures

(a) The Board shall establish procedures and disclosures to protect the interests of participants and employers.

(b)

(1) Before opening the Program for enrollment, the Board shall design and disseminate to employers and employees information regarding the Program.

(2) The information provided shall include background information on the Program and appropriate disclosures for employees, including:

(i) the benefits and risks associated with making contributions to the Program;

(ii) the mechanics of how to make contributions to the Program;

(iii) how to opt out of the Program;

(iv) the process for withdrawal of retirement savings;

(v) how to obtain additional information on the Program; and

(vi) information about alternative retirement savings options.

(c) The disclosure form shall clearly state the following:

- (1) employees seeking financial advice should contact financial advisors because employers are not in a position to provide financial advice;
- (2) in accordance with § 12-501 of this title, employers are not liable for decisions made by employees;
- (3) the Program is not an employer-offered savings arrangement; and
- (4) in accordance with § 12-502 of this title, the Program fund may be privately insured and is not guaranteed by the State.

(d) The Board shall establish procedures for:

- (1) a covered employee to opt out of participation in the Program;
- (2) a participating employee to opt out of participation in the Program after the participating employee has commenced participation; and
- (3) an employee who has opted out of participation to participate or resume participation in the Program.

Added by 2016 Md. Laws, Ch. 324,Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323,Sec. 1, eff. 7/1/2016.

Section 12-206. Reports and audits

(a) On or before August 1 each year, the Board shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Trust to the Governor and, subject to § 2-1257 of the State Government Article, the General Assembly.

(b) The annual audit shall be made by an independent certified public accountant and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not State employees.

Added by 2016 Md. Laws, Ch. 324,Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323,Sec. 1, eff. 7/1/2016.

Subtitle 3. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST

Section 12-301. Maryland Small Business Retirement Savings Trust

Section 12-301. Maryland Small Business Retirement Savings Trust

(a) There is a Maryland Small Business Retirement Savings Trust.

(b)

- (1) The Maryland Small Business Retirement Savings Trust shall be administered by the Board for the purpose of promoting greater retirement savings for Maryland private sector employees in a convenient, voluntary, low-cost, and portable manner.

(2) The Board shall enter into an agreement delegating the administration of the Trust to a third-party administrator.

(c) Money in the Trust may be invested or reinvested as determined by the Board.

(d) Any contributions paid by employees into the Trust may be used only to:

(1) pay benefits to the participants of the Program;

(2) pay the cost for administering the Program; and

(3) make investments for the benefit of the Program.

(e) The Board shall establish, by regulation, dates when an employer shall deposit employee contributions.

(f) The State may not transfer any assets of the Trust to the General Fund or any other fund of the State, or otherwise encumber any assets of the Trust.

Added by 2016 Md. Laws, Ch. 324, Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323, Sec. 1, eff. 7/1/2016.

Subtitle 4. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM

Section 12-401. Program established

Section 12-402. Payroll deposit retirement savings arrangement

Section 12-403. Opting in and out; termination of participation; contribution rates; status of contributions

Section 12-401. Program established

(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.

Section 12-402. Payroll deposit retirement savings arrangement

(a)

(1) After the Board opens the Program for enrollment, covered employers shall establish a payroll deposit retirement savings arrangement to allow employee participation in the Program.

(2) A covered employer shall automatically enroll a covered employee in the Program, unless the employee elects to opt out in accordance with procedures established by the Board.

(b) If a covered employer is not in compliance with subsection (a) of this section, the covered employer may not receive a waiver of the filing fee under § 1-203(b)(13) of the Corporations and Associations Article.

(c) Employers shall retain the option at all times to set up any type of employer-offered savings arrangement instead of having a payroll deposit retirement savings arrangement to allow employee participation in the Program.

(d) Compliance with this title and participation in the Program by itself does not create a fiduciary obligation of an employer with respect to the operation of the Program or funds contributed to the Program.

Amended by 2018 Md. Laws, Ch. 596,Sec. 1, eff. 6/1/2018. Added by 2016 Md. Laws, Ch. 324,Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323,Sec. 1, eff. 7/1/2016.

Section 12-403. Opting in and out; termination of participation; contribution rates; status of contributions

(a) A covered employee of a participating employer may elect to opt out of the Program.

(b) A covered employee of a participating employer who elects to opt out of the Program may re-enroll in the Program in accordance with procedures established by the Board.

(c) After the Board opens the Program for enrollment, an employee of a nonparticipating employer may elect to participate in the Program as authorized by the Board.

(d) A participating employee may terminate participation in the Program at any time in a manner prescribed by the Board.

(e) Unless otherwise specified by the employee, a participating employee shall contribute a fixed percentage or dollar amount of the employee's salary or wages to the Program.

(f) By regulation, the Board shall set and may adjust the default contribution amount set in subsection (e) of this section.

(g) The assets in a participating employee's Program account are the property of the participating employee.

Added by 2016 Md. Laws, Ch. 324,Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323,Sec. 1, eff. 7/1/2016.

Subtitle 5. LIMITATION OF LIABILITY

Section 12-501. Employer liability

Section 12-502. State liability

Section 12-501. Employer liability

(a) An employer may not be held liable for:

- (1) an employee's decision to participate in or opt out of the Program;
- (2) the investment decisions of employees whose assets are deposited in the Program;
- (3) the administration, investment, or investment performance of the Trust or the Program; or
- (4) the Program design or the benefits paid to Program participants.

(b) An employer is not a fiduciary, and may not be considered to be a fiduciary, of the Trust or the Program.

Added by 2016 Md. Laws, Ch. 324,Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323,Sec. 1, eff. 7/1/2016.

Section 12-502. State liability

(a) The State may not be held liable for the payment of the retirement savings benefit earned by Program participants in accordance with this title.

(b) The debts, contracts, and obligations of the Board, Trust, or the Program are not the debts, contracts, and obligations of the State and neither the faith and credit nor the taxing power of the State is pledged directly or indirectly to the payment of the debts, contracts, and obligations.

Added by 2016 Md. Laws, Ch. 324,Sec. 1, eff. 7/1/2016. Added by 2016 Md. Laws, Ch. 323,Sec. 1, eff. 7/1/2016.

Maryland Code

CORPORATIONS AND ASSOCIATIONS

Title 1. GENERAL PROVISIONS(§§ 1-101 to 1-508)

Subtitle 2. FEES AND RECORDING(§§ 1-201 to 1-209)

Section 1-203. Recording, filing, and other fees

(a) In addition to any organization and capitalization fee required under § 1-204 of this subtitle, subject to subsection (c) of this section, the Department shall collect the fees specified in subsection (b) of this section.

(b)

* * *

(3) For each of the following documents, the nonrefundable processing fee is as indicated:

* * *

(ii) Except as provided in paragraph (13) of this subsection, for each of the following documents which are filed but not recorded, the filing fee is as indicated:

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

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

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

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

Annual report of a business trust..\$300

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

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

* * *

(13) Beginning in fiscal year 2022, the Department shall waive the filing fee for a business entity described under paragraph (3)(ii) of this subsection for each year that the entity provides evidence to the Department that:

(i) The entity is required to comply with and is in compliance with Title 12 of the Labor and Employment Article; or

(ii) The entity otherwise provides an employer-offered savings arrangement, as defined in § 12-101(e) of the Labor and Employment Article, that is in compliance with federal law.

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