

18A.255 Investments -- Limitation of liability -- Standards of conduct.

- (1) Subject to subsections (3) and (4) of this section but notwithstanding any other provision of KRS 18A.230 to 18A.275, funds held for the state public employees deferred compensation trust fund pursuant to agreement between the state and participating employees may be invested in such investments as are deemed appropriate by the trustees, including but not limited to annuity contracts. Agreements may be made in writing or by electronic record, signature, or contract as determined by the authority in accordance with the provisions of KRS 369.101 to 369.120 and shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.
- (2) Funds deposited to the credit of the trust fund from payroll deductions made pursuant to KRS 18A.250 shall be temporarily invested as provided in KRS 42.500 until such funds are invested pursuant to the deferred compensation agreements between the state and participating employees and actually credited to accounts for plan participants. Notwithstanding KRS 42.500, interest earned from such temporary investments and by the trust fund and the corpus of the trust fund shall be used to defray the expenses of administering the deferred compensation plans, including but not limited to all business and operational expenses, premiums for general and fiduciary liability insurance and deductible costs, and costs to settle claims against the authority, its plans, and trustees, as determined by the board in the best interest of plan participants.
- (3) Neither the authority nor the board shall be liable for any losses or claims due to a participant's actions in connection with the investment advice or financial planning provided to the participant by operation of KRS 18A.245(7)(f) or other statute or administrative regulation. The authority and board shall have no duty or obligation to monitor, review, or assess the specific investment advice or financial planning provided to a participant.
- (4)
 - (a) The participant shall have sole responsibility for evaluation, selection, and monitoring of investments held in his or her self-directed brokerage account, and shall at all times be and remain responsible and liable for any losses in his or her self-directed brokerage account. Expenses charged for use of a self-directed brokerage account shall be paid solely by the participant.
 - (b) Neither the authority nor the board shall be liable for any losses, expenses, liabilities, or claims due to a participant's actions in connection with a self-directed brokerage account provided to the participant by operation of KRS 18A.245(7)(g) or other statute or administrative regulation. The authority and board shall have no duty or obligation to monitor, review, or assess the investments held in a participant's self-directed brokerage account or the self-directed brokerage account's investment performance. Neither the authority nor the board shall be responsible for review or evaluation of fees of a self-directed brokerage account, including but not limited to fees of a self-directed brokerage account's custodian or broker. The board's selection of a restricted asset list for self-directed brokerage accounts creates no presumption that the board has any obligation or duty to select, monitor, or deem prudent assets which may be invested in a self-directed brokerage account.

- (5) (a) A trustee shall discharge his or her duties as a trustee, including his or her duties as a member of a committee:
1. In good faith;
 2. On an informed basis; and
 3. In a manner he or she honestly believes to be in the best interest of the authority and its plans and trusts.
- (b) A trustee discharges his or her duties on an informed basis if, when he or she makes an inquiry into the business affairs of the board or authority or into a particular action to be taken or decision to be made, he or she exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his or her duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the board whom the trustee honestly believes to be reliable and competent in the matters presented;
 2. Legal counsel, public accountants, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
 3. A committee of the board of trustees of which he or she is not a member if the trustee honestly believes the committee merits confidence.
- (d) A trustee shall not be considered as acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
- (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
 2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the authority or its plans or trusts.

Effective: June 27, 2025

History: Amended 2025 Ky. Acts ch. 141, sec. 4, effective June 27, 2025. -- Amended 2021 Ky. Acts ch. 111, sec. 4, effective June 29, 2021. -- Amended 2010 Ky. Acts ch. 122, sec. 3, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 181, sec. 4, effective July 15, 2008. -- Repealed, reenacted, and amended as KRS 18A.255, 1982 Ky. Acts ch. 448, sec. 51, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 352, sec. 2, effective July 15, 1980. -- Created 1974 Ky. Acts ch. 143, sec. 7.

Formerly codified as KRS 18.560.