

**61.685 Records -- Audits -- System's authority to enforce its powers -- Limitation of liability -- Fraudulent claims to obtain benefits -- Investigation, enforcement, and penalties.**

- (1) Notwithstanding the provisions of KRS Chapter 413, upon discovery of any error or omission in system records, the system shall correct all records, including but not limited to membership in the system, service credit, member and employer contributions, and benefits paid or payable. The system may conduct audits to detect possible fraud, misrepresentation, and change in circumstance, which may result in errors or omissions in the system's records. The system, by its executive director or by representatives appointed in writing by the executive director, may take testimony or depositions, and may examine records, documents, or files of any person whose records, documents, or files may furnish knowledge concerning any system records, when the executive director or representative deems this reasonably necessary for purposes incident to the performance of the system's functions. The system may enforce these powers by application to the Franklin Circuit Court, which court may compel compliance with the orders of the executive director or representatives appointed by the executive director.
- (2) Neither the board nor any of its individual members shall be liable to any person for any claim arising from the failure of any participating employer, or any employer who should have been participating in any retirement system operated by the board, to make retirement contributions on behalf of the person.
- (3) (a) For purposes of this subsection:
  1. "Knowingly" means, with respect to conduct or to a circumstance described by this subsection, that a person is aware that his or her conduct is of that nature or that the circumstance exists; and
  2. "Person" means a natural person, individual, county, city, agency, board or commission, sole proprietorship, partnership, corporation, limited liability company, organization, association, business, trust, or other legal entity. "Person" may be construed as singular or plural.
- (b) A person shall be liable under this subsection if he or she knowingly:
  1. Submits or causes to be submitted a false or fraudulent claim for the payment or receipt of any benefit provided under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852;
  2. Makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim to obtain benefits provided under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852; or
  3. Possesses or otherwise has custody or control of money, records, or property used or to be used by the Kentucky Public Pensions Authority or the systems it administers and fails to deliver or delivers less than all of the money, records, or property to which the authority or the retirement systems it administers are entitled, including but not limited to member agencies failing to report and remit employer and employee contributions and employment records to the authority.

- (c) A person found to have committed one (1) or more of the actions under paragraph (b) of this subsection by a preponderance of the evidence in an administrative process before the authority or in an action before the Franklin Circuit Court in conformity with all due process protections shall be liable for:
1. Restitution of any payments received for which the person was not entitled to receive by reason of violation of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 and interest at the maximum legal rate pursuant to KRS 360.010 in effect on the date any payment was made for the period from the date payment was made to the date of repayment to the authority;
  2. A civil payment in an amount up to three (3) times the amount of the excess payments;
  3. A civil payment of five hundred dollars (\$500) for each false or fraudulent claim submitted for the payment of benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852; and
  4. Legal fees and costs of investigation and enforcement of civil remedies, including all attorneys' fees and costs of litigation.
- (d) Upon the written request of the authority, the Attorney General shall investigate and file the necessary actions to enforce civil penalties for violations of this subsection and, if funds are recovered by or on behalf of the authority in any legal action, may recover reasonable costs of litigation as determined by the court as provided by KRS 48.005.
- (e) Civil payments, interest, and costs of investigation and enforcement of civil remedies, including attorneys' fees and other costs not included under paragraph (d) of this subsection, recovered on behalf of the authority under this subsection shall be made payable to the State Treasurer and remitted to the Kentucky Public Pensions Authority for deposit in the affected trusts administered by the Kentucky Public Pension Authority. The affected trusts shall be made whole, and any additional penalties and fees shall be distributed to the trusts as a whole consistent with the methods used to distribute administrative expenses between the trusts.
- (f) The remedies under this section are separate from and cumulative to any other administrative, civil, or criminal remedies available to the authority and the systems it administers under federal or state law or regulation.

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 189, sec. 1, effective June 29, 2021. -- Amended 2004 Ky. Acts ch. 36, sec. 28, effective July 13, 2004. -- Amended 1996 Ky. Acts ch. 167, sec. 20, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 485, sec. 24, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 240, sec. 47, effective July 14, 1992. -- Amended 1972 Ky. Acts ch. 116, sec. 57. -- Created 1956 Ky. Acts ch. 110, sec. 36.

**Legislative Research Commission Note** (6/29/2021). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format of subsection (3)(a) of this statute during codification to place the terms in alphabetical order. The words in the text were not changed.