

AN ACT relating to small business deferred compensation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 18 of this Act:

(1) "Board" means the Kentucky retirement account board.

(2) (a) "Employee" means an individual who is employed by an employer;

(b) "Employee" does not include:

1. Any employee covered under the federal Railway Labor Act, or any employee engaged in interstate commerce so as not to be subject to the legislative powers of this state, except insofar as application of Sections 1 to 18 of this Act is authorized under the laws of the United States;

2. Any employee covered by a valid collective bargaining agreement that expressly provides for a multiemployer Taft-Hartley pension plan; and

3. Any employee who is under eighteen (18) years of age before the beginning of the calendar year;

(3) (a) "Employer" means an individual or entity engaged in a business, industry, profession, trade, or other enterprise in this state, whether for profit or not for profit, that has:

1. Five (5) or more employees;

2. Has been in business at least two (2) years;

3. Has not offered a qualified retirement plan, including but not limited to a plan qualified under Section 401(a), Section 402(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal Revenue Code, in the preceding two (2) years; and

4. Satisfies the requirements to establish or participate in a payroll deposit retirement savings agreement;

(b) Employer does not include:

1. The federal government;

2. The state;

3. Any local government of the state; or

4. Any of the state's units or instrumentalities.

(4) "Enrollee" means any employee who is enrolled in the program;

(5) "Fund" means the Kentucky retirement account fund;

(6) "IRA" means a Roth individual retirement account under Section 408A of the Internal Revenue Code;

(7) "Participating employer" means an employer that provides a payroll deposit retirement savings arrangement for enrolled employees;

(8) "Payroll deposit retirement savings arrangement" means an arrangement by which an employer allows employees to remit payroll deduction contributions to a retirement savings program;

(9) "Program" means the Kentucky retirement account;

(10) (a) "Vendor" means a registered investment company, life insurance company, or qualified third party administrator, authorized to do business in Kentucky that provides or administers retirement investment products, including a company that is authorized to do business in Kentucky that provides payroll services or recordkeeping services and offers retirement plans or payroll deposit IRA arrangements using products of regulated investment companies and insurance companies qualified to do business in this state;

(b) "Vendor" does not include individual registered representatives, brokers, financial planners or agents.

(11) "Wages" means any compensation, as defined by, Section 219(f)(1) of the Internal Revenue Code, that is received by an enrollee from a participating employer during the calendar year.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

A retirement savings program in the form of an automatic enrollment payroll deduction IRA, known as the Kentucky retirement account, is hereby established and shall be administered by the Kentucky retirement account board for the purpose of promoting greater retirement savings for private sector employees in a convenient, voluntary, low-cost, and portable manner.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky retirement account fund is hereby established as a trust fund outside of the State Treasury, with the board created in Section 4 of this Act as its trustee.

(2) The fund shall consist of individual retirement accounts of enrollees, which shall be accounted for as individual accounts, each consisting of private moneys in the fund received from enrollees and participating employers on behalf of enrollees pursuant to automatic payroll deductions and contributions to savings made under Sections 1 to 18 of this Act. The fund shall be administered in a manner determined by the board, provided that the accounts of enrollees established under the program meet the requirements for IRAs under the Internal Revenue Code.

(3) The state shall have no claim to or against, or interest in any amount deposited into the fund, and amounts on deposit in the fund shall not be commingled with any public funds.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO

READ AS FOLLOWS:

- (1) The Kentucky retirement account board is created, the board shall consist of seven (7) members, with the State Treasurer serving as chair, as follows:

 - (a) The State Treasurer, ex officio;
 - (b) The secretary of the Labor Cabinet, ex officio;
 - (c) The secretary of the Finance and Administration Cabinet, ex officio;
 - (d) Two (2) at-large members appointed by the Governor with expertise in retirement savings plan administration or investment, or both;
 - (e) One (1) at-large member appointed by the State Treasurer who is a member of the general public; and
 - (f) One (1) at-large member appointed by the State Treasurer who is a small business owner.
 - (g) Each ex officio member may designate a proxy by written notice to the board prior to the call of order of each meeting, and the proxy shall be entitled to participate as a full voting member.
- (2) The members of the board appointed by the Governor and State Treasurer shall serve for a period of four (4) years; and
- (3) Any vacancy which occurs shall be filled in the same manner provided for by the selection of the particular member for a full term. Vacancies shall be filled for the expired term only.
- (4) Board members shall serve without compensation but may be reimbursed for necessary travel expenses incurred in connection with their board duties from funds provided pursuant to Section 5 of this Act.
- (5) Membership on the board shall not be incompatible with any other office unless a constitutional incompatibility exists, and no member shall be subject to removal from office, except upon conviction of a felony, or a misdemeanor involving moral turpitude.

(6) The board shall meet at least once in each quarter of the year, and may meet in special session upon the call of the chair.

(7) A majority of the members shall constitute a quorum, and all actions taken shall be by affirmative vote of a majority of the members present.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky retirement account board shall be attached, for administrative purposes, to the State Treasurer's office.

(2) Routine administrative costs incurred by the board shall be absorbed in the budget for the State Treasurer; and

(3) The State Treasurer may pursue and accept contributions, grants, and other donations which shall be used to set up the program and for the administrative costs of the board. This authority shall include the authority to create a nonprofit entity to accept these contributions in accordance with federal and state statute.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The board, the individual members of the board, the trustee, or any other agents engaged by the board, and all persons serving as program staff shall discharge their duties with respect to the program solely in the interest of the program's enrollees and beneficiaries.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The board shall comply with and carry out the following responsibilities:

(1) Cause the program to be designed, established and operated in a manner that:

(a) Accords with best practices for retirement savings vehicles;

(b) Maximizes participation, savings, and sound investment practices;

(c) Maximizes simplicity, including ease of compliance and use for

- participating employers and enrollees;
- (d) Provides an efficient and cost-effective product to enrollees;
- (e) Ensures the portability of benefits; and
- (f) Provides for the deaccumulation of enrollee assets in a manner that maximizes financial security in retirement.
- (2) Comply with all applicable federal law and regulations of the Department of the Treasury relating to the Internal Revenue Code.
- (3) Make and enter into contracts necessary for the administration of the program.
- (4) Evaluate and establish the process by which an enrollee is able to contribute a portion of his or her wages to the program for automatic deposit of those contributions and the process by which the participating employer provides a payroll deposit retirement savings arrangement to forward those contributions and related information to the program.
- (5) Design and establish the process for enrollment under Section 12 of this Act, including the process by which an employee may:
- (a) Opt not to participate in the program;
- (b) Select a contribution level;
- (c) Select an investment option; and
- (d) Terminate participation in the program.
- (6) Keep annual administrative expenses as low as possible.
- (7) Facilitate education and outreach to employers and employees.
- (8) Carry out the duties and obligations of the program in an effective, efficient, and low-cost manner. This includes the authority to explore, with other state entities, the potential efficiencies which might be achieved by combining vendor contracting opportunities.
- (9) Exercise any other powers reasonably necessary for the effectuation of the purposes, objectives, and provisions of Sections 1 to 18 of this Act pertaining to

the program.

(10) Conduct or cause to be conducted an audit of program-related activities of any vendor.

(11) Enter into information sharing agreements with any other state government entity possessing data necessary for program administration.

(12) Recommend to the Kentucky General Assembly, for legislative action, nonpunitive incentives to encourage employer and employee participation, including but not limited to tax credits.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

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

(2) The risk management and oversight program shall be designed to:

(a) Ensure that an effective risk management system is in place to monitor the risk levels of the program and fund portfolio;

(b) Ensure that the risks taken are prudent and properly managed to provide an integrated process for overall risk management; and

(c) Assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) The board shall engage, through a procurement process, pursuant to KRS Chapter 45A, a vendor to administer the program.

(2) The vendor shall comply with all applicable federal and state laws, rules and regulations, as well as all administrative regulations promulgated by the board with respect to the program and the investment of the fund including but not

limited to the investment policy.

(3) The vendor shall provide the reports that the board deems necessary for the board to oversee the vendor's performance and the performance of the fund.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) The board shall insure that investment options include a life-cycle fund with a target date based upon the age of the enrollee.

(a) The life-cycle fund shall be the default investment option for enrollees who fail to elect an investment option unless and until the board designates by rule a new investment option as the default.

(b) The contribution amount for the default option shall be three percent (3%) of wages.

(2) The board shall exercise its best efforts to also ensure that an appropriate menu of investment options are available to enrollees.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) Prior to the opening of the program for enrollment, the board shall develop, design, and disseminate to all employers an employer information packet and an employee information packet, which shall include background information on the program, appropriate disclosures for employees, and information regarding any program-related Internet Web site.

(2) The employee information packet shall include but not be limited to all of the following:

(a) The benefits and risks associated with making contributions to the program;

(b) The mechanics of how to make contributions to the program;

(c) How to opt out of the program;

- (d) How to participate in the program;
 - (e) The process for withdrawal of retirement savings;
 - (f) How to obtain additional information about the program;
 - (g) A statement advising employees seeking financial advice to contact financial advisors, and also stating that participating employers are not in a position to provide financial advice, and are not liable for the decisions employees make pursuant to Sections 1 to 18 of this Act;
 - (h) A statement that the program is not an employer-sponsored retirement plan;
 - (i) A statement that the program fund is not guaranteed by the state;
 - (j) A form for an employee to note his or her decision to opt out of participation in the program; and
 - (k) Information stating that the default option is a lifecycle fund and that the initial investment amount shall be three percent (3%) of wages.
- (3) Participating employers shall provide employees with a copy of the employee information packet upon the implementation of the program or at the time of hiring.
- ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:
- (1) Except as otherwise provided, the program shall be implemented and enrollment of employees shall begin within twenty-four (24) months after the effective date of this Act.
 - (2) Each employer shall establish a payroll deposit retirement savings arrangement to allow each employee to participate in the program within nine (9) months after implementation of the program.
 - (3) Any employer for whom compliance with Sections 1 to 18 of this Act would cause a hardship may notify the board of its need for an exemption from the requirements of Sections 1 to 18 of this Act. Any claim of hardship from an

- employer shall carry an irrefutable presumption of actual hardship and an exemption shall be granted.
- (4) Employers with four (4) or fewer employees that have been in business two (2) or more years may voluntarily elect to participate in the program pursuant to rules prescribed by the board.
- (5) Employers shall enroll each employee who has not opted out of participation in the program, and shall provide payroll deduction retirement savings arrangements for these enrollees and deposit the funds into the program.
- (6) Enrollees may select a contribution level. This level may be set up to the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code.
- (7) If an enrollee fails to select a contribution level using the form described in subsection (2) of Section 11 of this Act, then the enrollee shall contribute three percent (3%) of his or her wages to the program, provided that this contribution does not cause the enrollee's total contributions to IRAs for the year to exceed the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code.
- (8) Enrollees may change their contribution level at any time, subject to administrative regulations promulgated by the board.
- (9) Enrollees may select an investment option or a mix of investment options contained within the program.
- (10) Enrollees may change their investment option at any time, subject to administrative regulations promulgated by the board.
- (11) If an enrollee fails to select an investment option, that enrollee shall be placed in the investment option selected by the board as the default under subsection (1) of Section 10 of this Act. If the board has not selected a default investment option, then an enrollee who fails to select an investment option shall be placed in the

life-cycle fund investment option.

(12) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE), instead of having a payroll deposit retirement savings arrangement to allow employee participation in the program.

(13) An employee may terminate his or her participation in the program at any time in a manner prescribed by the board.

(14) (a) The board shall establish and maintain an Internet Web site designed to assist employers in identifying private sector providers of retirement arrangements that can be set up by the employer rather than allowing employee participation in the program under Sections 1 to 18 of this Act;

(b) However, the board shall only establish and maintain an Internet Web site under this subsection if there is sufficient interest in such an Internet Web site by private sector providers and if the private sector providers furnish the funding necessary to establish and maintain the Internet Web site.

(c) The board shall provide public notice of the availability of and the process for inclusion on the Internet Web site before it becomes publicly available.

(d) If the Internet Web site is available to the public before the board opens the program for enrollment, the Internet Web site address shall be included on any Internet Web site posting or other materials regarding the program offered to the public by the board.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

Enrollee contributions deducted by the participating employer through payroll deduction shall be paid by the participating employer to the fund pursuant to payroll deposit retirement savings arrangements established by the board.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) The state shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the program.

(2) No state board, commission, or agency, or any officer, employee, or member thereof shall be liable for any loss or deficiency resulting from particular investments selected under Sections 1 to 18 of this Act, except for any liability that arises out of a breach of fiduciary duty under Section 6 of this Act.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) Participating employers shall not have any liability for an employee's decision to participate in, or opt out of, the program or for the investment decisions of the board or of any enrollee.

(2) A participating employer shall not be a fiduciary, or considered to be a fiduciary, over the program. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the program. A participating employer shall not be liable with regard to investment returns, program design, and benefits paid to program participants.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, as necessary to carry out and implement the provisions of Sections 1 to 18 of this Act.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

If the board does not obtain adequate funds to implement the program within the time frame set forth under Section 12 of this Act, the board may delay the implementation of the program.

→SECTION 18. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The board, if deemed necessary, shall request in writing an opinion or ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income Security Act regarding the applicability of the federal Employee Retirement Income Security Act to the program.