

1 AN ACT relating to fraud against the Kentucky Public Pensions Authority.

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

3 ➔Section 1. KRS 61.685 is amended to read as follows:

4 (1) Notwithstanding the provisions of KRS Chapter 413, upon discovery of any error or
5 omission in system records, the system shall correct all records including, but not
6 limited to, membership in the system, service credit, member and employer
7 contributions, and benefits paid or payable. The system may conduct audits to detect
8 possible fraud, misrepresentation, and change in circumstance, which may result in
9 errors or omissions in the system's records. The system, by its executive director or
10 by representatives appointed in writing by the executive director, may take
11 testimony or depositions, and may examine records, documents, or files of any
12 person whose records, documents, or files may furnish knowledge concerning any
13 system records, when the executive director or representative deems this reasonably
14 necessary for purposes incident to the performance of the system's functions. The
15 system may enforce these powers by application to the Franklin Circuit Court,
16 which court may compel compliance with the orders of the executive director or
17 representatives appointed by the executive director.

18 (2) Neither the board nor any of its individual members shall be liable to any person for
19 any claim arising from the failure of any participating employer, or any employer
20 who should have been participating in any retirement system operated by the board,
21 to make retirement contributions on behalf of the person.

22 **(3) (a) For purposes of this subsection:**

23 **1. "Person" means a natural person, individual, county, city, agency,**
24 **board or commission, sole proprietorship, partnership, corporation,**
25 **limited liability company, organization, association, business, trust, or**
26 **other legal entity. "Person" may be construed as singular or plural;**
27 **and**

1 2. "Knowingly" means, with respect to conduct or to a circumstance
2 described by this subsection, that a person is aware that his or her
3 conduct is of that nature or that the circumstance exists.

4 (b) A person shall be liable under this subsection if he or she knowingly:

5 1. Submits or causes to be submitted a false or fraudulent claim for the
6 payment or receipt of any benefit provided under KRS 16.505 to
7 16.652, 61.510 to 61.705, and 78.510 to 78.852;

8 2. Makes, uses, or causes to be made or used a false record or statement
9 material to a false or fraudulent claim to obtain benefits provided
10 under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852;
11 or

12 3. Possesses or otherwise has custody or control of money, records, or
13 property used or to be used by the Kentucky Public Pensions Authority
14 or the systems it administers and fails to deliver or delivers less than
15 all of the money, records, or property to which the authority or the
16 retirement systems it administers are entitled, including but not limited
17 to member agencies failing to report and remit employer and employee
18 contributions and employment records to the authority.

19 (c) A person found to have committed one (1) or more of the actions under
20 paragraph (b) of this subsection by a preponderance of the evidence in an
21 administrative process before the authority or in an action before the
22 Franklin Circuit Court in conformity with all due process protections shall
23 be liable for:

24 1. Restitution of any payments received for which the person was not
25 entitled to receive by reason of violation of KRS 16.505 to 16.652,
26 61.510 to 61.705, or 78.510 to 78.852 and interest at the maximum
27 legal rate pursuant to KRS 360.010 in effect on the date any payment

1 was made for the period from the date payment was made to the date
2 of repayment to the authority;

3 2. A civil payment in an amount up to three (3) times the amount of the
4 excess payments;

5 3. A civil payment of five hundred dollars (\$500) for each false or
6 fraudulent claim submitted for the payment of benefits under KRS
7 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852; and

8 4. Legal fees and costs of investigation and enforcement of civil
9 remedies, including all attorneys' fees and costs of litigation.

10 (d) Upon the written request of the authority, the Attorney General shall
11 investigate and file the necessary actions to enforce civil penalties for
12 violations of this subsection and, if funds are recovered by or on behalf of
13 the authority in any legal action, may recover reasonable costs of litigation
14 as determined by the court as provided by KRS 48.005.

15 (e) Civil payments, interest, costs of investigation and enforcement of civil
16 remedies, including attorneys' fees and other costs not included under
17 paragraph (d) of this subsection, recovered on behalf of the authority under
18 this subsection shall be made payable to the State Treasurer and remitted to
19 the Kentucky Public Pensions Authority for deposit in the affected trusts
20 administered by the Kentucky Public Pension Authority. The affected trusts
21 shall be made whole and any additional penalties and fees shall be
22 distributed to the trusts as a whole consistent with the methods used to
23 distribute administrative expenses between the trusts.

24 (f) The remedies under this section are separate from and cumulative to any
25 other administrative, civil, or criminal remedies available to the authority
26 and the systems it administers under federal or state law or regulation.