

1 AN ACT relating to the Kentucky Public Employees' Deferred Compensation
2 Authority.

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

4 ➔Section 1. KRS 18A.230 is amended to read as follows:

5 As used in KRS 18A.230 to 18A.275, unless the context requires otherwise:

- 6 (1) "Employee" means a person holding an office, position or employment in state
7 government and agencies thereof and also includes persons in the public school
8 system;
- 9 (2) "Income" means earnings of a person while an employee of the state and agencies
10 thereof or public school system;
- 11 (3) "Asset" means any owned physical object or right having a monetary value;
- 12 (4) "Trust fund" means a fund consisting of assets received and held by a government
13 unit or its designated custodian to be expended or invested in accordance with
14 conditions of the trust;
- 15 (5) "Deferred compensation" means a method which allows employees to authorize
16 income to be deducted from their current earning and set aside to be paid at a later
17 date;
- 18 (6) "Board" means the board of trustees as established by KRS 18A.245;
- 19 (7) "Authority" means the Kentucky Public Employees' Deferred Compensation
20 Authority;~~and~~
- 21 (8) "Financial planning" means the process of determining whether and how a
22 participant can meet retirement goals through the proper management of financial
23 resources; **and**
- 24 **(9) "Self-directed brokerage account" means a brokerage account of record offered**
25 **by a broker-dealer selected by the board and registered with the United States**
26 **Securities and Exchange Commission which allows participants to invest in**
27 **securities registered with the United States Securities and Exchange Commission**

1 as alternative plan investments in addition to those designated by the board.

2 ➔Section 2. KRS 18A.235 is amended to read as follows:

3 The Kentucky Public Employees Deferred Compensation System is established pursuant
4 to the provisions of KRS 18A.230 to 18A.275, and shall transact all of its business and
5 shall have the powers and privileges of a corporation, including but not limited to the
6 following powers:

- 7 (1) The board shall have the power and authority to purchase fiduciary liability
8 insurance; and
9 (2) The board shall reimburse or advance any trustee, officer, or employee for any
10 legal expense resulting from a civil action arising out of the performance of his
11 or her official duties. The hourly rate for any contract for legal services under
12 this subsection shall not exceed the maximum hourly rate provided in the Legal
13 Services Duties and Maximum Rate Schedule promulgated by the Government
14 Contract Review Committee established pursuant to KRS 45A.705, unless a
15 higher rate is specifically approved by the secretary of the Finance and
16 Administration Cabinet or his or her designee.

17 ➔Section 3. KRS 18A.245 is amended to read as follows:

- 18 (1) The authority shall be administered by a board of trustees composed of seven (7)
19 members, who shall be as follows:
- 20 (a) Secretary, Finance and Administration Cabinet, ex officio;
 - 21 (b) Secretary of personnel, ex officio;
 - 22 (c) The state controller, ex officio;
 - 23 (d) The State Treasurer, ex officio; and
 - 24 (e) Three (3) at-large members appointed by the Governor, who do not have a
25 conflict of interest as provided by KRS 18A.262, one (1) of whom shall have
26 at least five (5) years of investment or banking experience and one (1) of
27 whom shall be a representative of a nonstate government employer.

- 1 (2) The members of the board appointed by the Governor shall serve for a period of
2 four (4) years and the ex officio members of the board shall serve only for the
3 period of their term of office. Each ex officio member may designate a proxy by
4 written notice to the authority prior to call of order of each meeting, and the proxy
5 shall be entitled to participate as a full voting member.
- 6 (3) Any vacancy which may occur shall be filled in the same manner provided for the
7 selection of the particular member for a full term. Vacancies shall be filled for the
8 unexpired term only.
- 9 (4) Membership on the board of trustees shall not be incompatible with any other office
10 unless a constitutional incompatibility exists, and no member shall be subject to
11 removal from office, except upon conviction of a felony, or of a misdemeanor
12 involving moral turpitude.
- 13 (5) Board members who do not otherwise receive a salary or compensation from the
14 State Treasury shall receive a per diem of one hundred dollars (\$100) for each day
15 they are in session or on official duty, and they shall be reimbursed for their actual
16 and necessary expenses in accordance with state administrative regulations and
17 standards applicable to state employees.
- 18 (6) The board shall meet at least once in each quarter of the year, and may meet in
19 special session upon the call of the chair~~[chairman]~~. It shall elect a chair~~[chairman]~~
20 and a vice chair~~[chairman]~~. A majority of the members shall constitute a quorum,
21 and all actions taken by the board shall be by affirmative vote of a majority of the
22 members present.
- 23 (7) The authority shall be attached to the Personnel Cabinet for administrative purposes
24 only. The board may take but is not limited to the following actions:
- 25 (a) Appoint such employees as it deems necessary and fix the compensation for
26 all employees of the board, subject to the approval of the secretary. The
27 authority shall be headed by an executive director who shall be appointed by

- 1 the board of trustees~~[directors]~~ of the authority without the limitations
2 imposed by KRS 12.040 and KRS Chapter 18A. The executive director of the
3 authority and employees appointed by the board shall serve at its will and
4 pleasure. All other staff of the authority shall be employed under KRS
5 18A.005 to 18A.200;
- 6 (b) Require such employees as it thinks proper to execute bonds for the faithful
7 performance of their duties;
- 8 (c) Establish a system of accounting;
- 9 (d) Contract for such services as may be necessary for the operation or
10 administration of deferred compensation plans authorized in KRS 18A.230 to
11 18A.275, including annual audits;
- 12 (e) Do all things, take all actions, and adopt plans for participation consistent with
13 federal law and with the provisions of KRS 18A.230 to 18A.275, including
14 but not limited to:
- 15 1. Amending the board's plan for the Kentucky Public Employees 401(k)
16 Deferred Compensation Plan or the Kentucky Employees 457 Deferred
17 Compensation Plan, or both such plans, to adopt, maintain, and
18 terminate a deemed IRA program under Internal Revenue Code Section
19 408;
- 20 2. Amending the board's plan for the Kentucky Public Employees 401(k)
21 Deferred Compensation Plan to adopt, maintain, and terminate a
22 qualified Roth contribution program under Internal Revenue Code
23 Section 402A; and
- 24 3. Adopting, maintaining, and terminating an Internal Revenue Code
25 Section 403(b) plan for qualified employees;~~[and]~~
- 26 (f) Contract with persons or companies duly licensed by the state of Kentucky
27 and applicable federal regulatory agencies, at the cost of the trust fund or

1 individual participant accounts, to provide investment advice and financial
2 planning to participants in the plans, with respect to their selection of
3 investments. The board may promulgate administrative regulations for
4 provision of financial planning to participants in the plans;

5 (g) Contract with companies duly licensed by the state of Kentucky and
6 applicable federal regulatory agencies to provide self-directed brokerage
7 accounts to participants for their individual selection of plan account
8 investments. Such contracts with self-directed brokerage account vendors
9 shall be exempt from KRS Chapters 45 and 45A. The board may promulgate
10 administrative regulations in accordance with KRS Chapter 13A for the
11 provision of self-directed brokerage accounts to participants; and

12 (h) Promulgate administrative regulations in accordance with KRS Chapter
13 13A, provided the regulations are not inconsistent with KRS 18A.230 to
14 18A.275, necessary or proper in order to carry out the provisions of this
15 section and duties authorized by KRS 18A.230 to 18A.275.

16 (8) The Attorney General, or an assistant designated by him or her, may act as legal
17 adviser and attorney for the board. The board may also appoint legal counsel in
18 accordance with KRS Chapter 12.

19 (9) The board shall prepare an annual financial report showing all receipts,
20 disbursements, assets, and liabilities and shall submit a copy to the Governor and
21 the Legislative Research Commission. All board meetings and records shall be open
22 for inspection by the public.

23 (10) Notwithstanding any other evidence of legislative intent, it is hereby declared to
24 be the controlling legislative intent that the provisions of KRS 18A.230 to
25 18A.275 shall conform with federal statutes or regulations and meet the
26 qualification requirements under 26 U.S.C. secs. 401(a) and 457(b), applicable
27 federal regulations, and other published guidance, and the board shall have the

1 authority to promulgate administrative regulations, with retroactive effect if
2 required under federal law, to conform the Kentucky Public Employees 401(k)
3 Deferred Compensation Plan and the Kentucky Employees 457(b) Deferred
4 Compensation Plan with federal statutes and regulations and to meet the
5 qualification requirements under 26 U.S.C. secs. 401(a) and 457(b).

6 ➔Section 4. KRS 18A.255 is amended to read as follows:

7 (1) Subject to subsections (3) and (4) of this section but notwithstanding any other
8 provision of KRS 18A.230 to 18A.275, funds held for the ~~state~~[State of Kentucky]
9 public employees deferred compensation trust fund pursuant to agreement between
10 the state and participating employees may be invested in such investments as are
11 deemed appropriate by the trustees, including but not limited to annuity contracts.
12 Agreements may be made in writing or by electronic record, signature, or contract
13 as determined by the authority in accordance with the provisions of KRS 369.101 to
14 369.120 and shall not be denied legal effect or enforceability if made electronically
15 to the extent permitted by the authority.

16 (2) Funds deposited to the credit of the trust fund from payroll deductions made
17 pursuant to KRS 18A.250 shall be temporarily invested as provided in KRS 42.500
18 until such funds are invested pursuant to the deferred compensation agreements
19 between the state and participating employees and actually credited to accounts for
20 plan participants. Notwithstanding KRS 42.500, interest earned from such
21 temporary investments and by the trust fund and the corpus of the trust fund shall
22 be used to defray the expenses of administering the deferred compensation plans,
23 including but not limited to all business and operational expenses, premiums for
24 general and fiduciary liability insurance and deductible costs, and costs to settle
25 claims against the authority, its plans, and trustees, as determined by the board in
26 the best interest of plan participants[system].

27 (3) Neither the authority nor the board shall be liable for any losses or claims due to a

1 participant's actions in connection with the investment advice or financial planning
2 provided to the participant by operation of KRS 18A.245(7)(f) or other statute or
3 administrative regulation^[otherwise]. The authority and board shall have no duty
4 or obligation to monitor, review, or assess the specific investment advice or
5 financial planning provided to a participant.

6 **(4) (a) The participant shall have sole responsibility for evaluation, selection, and**
7 **monitoring of investments held in his or her self-directed brokerage**
8 **account, and shall at all times be and remain responsible and liable for any**
9 **losses in his or her self-directed brokerage account. Expenses charged for**
10 **use of a self-directed brokerage account shall be paid solely by the**
11 **participant.**

12 **(b) Neither the authority nor the board shall be liable for any losses, expenses,**
13 **liabilities, or claims due to a participant's actions in connection with a self-**
14 **directed brokerage account provided to the participant by operation of**
15 **subsection (7)(g) of Section 3 of this Act or other statute or administrative**
16 **regulation. The authority and board shall have no duty or obligation to**
17 **monitor, review, or assess the investments held in a participant's self-**
18 **directed brokerage account or the self-directed brokerage account's**
19 **investment performance. Neither the authority nor the board shall be**
20 **responsible for review or evaluation of fees of a self-directed brokerage**
21 **account, including but not limited to fees of a self-directed brokerage**
22 **account's custodian or broker. The board's selection of a restricted asset list**
23 **for self-directed brokerage accounts creates no presumption that the board**
24 **has any obligation or duty to select, monitor, or deem prudent assets which**
25 **may be invested in a self-directed brokerage account.**

26 **(5) (a) A trustee shall discharge his or her duties as a trustee, including his or her**
27 **duties as a member of a committee:**

- 1 1. In good faith;
- 2 2. On an informed basis; and
- 3 3. In a manner he or she honestly believes to be in the best interest of the
- 4 authority and its plans and trusts.
- 5 (b) A trustee discharges his or her duties on an informed basis if, when he or
- 6 she makes an inquiry into the business affairs of the board or authority or
- 7 into a particular action to be taken or decision to be made, he or she
- 8 exercises the care of an ordinary prudent person in a like position would
- 9 exercise under similar circumstances.
- 10 (c) In discharging his or her duties, a trustee may rely on information,
- 11 opinions, reports, or statements, including financial statements and other
- 12 financial data, if prepared or presented by:
- 13 1. One (1) or more officers or employees of the board whom the trustee
- 14 honestly believes to be reliable and competent in the matters
- 15 presented;
- 16 2. Legal counsel, public accountants, or other persons as to matters the
- 17 trustee honestly believes are within the person's professional or expert
- 18 competence; or
- 19 3. A committee of the board of trustees of which he or she is not a
- 20 member if the trustee honestly believes the committee merits
- 21 confidence.
- 22 (d) A trustee shall not be considered as acting in good faith if he or she has
- 23 knowledge concerning the matter in question that makes reliance otherwise
- 24 permitted by paragraph (c) of this subsection unwarranted.
- 25 (e) Any action taken as a trustee, or any failure to take any action as a trustee,
- 26 shall not be the basis for monetary damages or injunctive relief unless:
- 27 1. The trustee has breached or failed to perform the duties of the

- 1 trustee's office in compliance with this section; and
- 2 2. In the case of an action for monetary damages, the breach or failure
- 3 to perform constitutes willful misconduct or wanton or reckless
- 4 disregard for human rights, safety, or property.
- 5 (f) A person bringing an action for monetary damages under this section shall
- 6 have the burden of proving by clear and convincing evidence the provisions
- 7 of paragraph (e)1. and 2. of this subsection, and the burden of proving that
- 8 the breach or failure to perform was the legal cause of damages suffered by
- 9 the authority or its plans or trusts.

10 ➔Section 5. KRS 18A.260 is amended to read as follows:

11 Assets held for the state public employees' deferred compensation trust fund shall be

12 invested as permitted by KRS 18A.230 to 18A.275. However, investments by

13 participants in self-directed brokerage accounts shall be limited to securities registered

14 with the United States Securities and Exchange Commission only~~[In no case shall such~~

15 ~~investment be other than permitted by KRS 18A.230 to 18A.275 and not prohibited by~~

16 ~~Section 177 of the Kentucky Constitution and must be offered by such persons or~~

17 ~~companies authorized and duly licensed by the State of Kentucky and applicable federal~~

18 ~~regulatory agencies to offer such insurance or investment programs in compliance with~~

19 ~~all relevant provisions of KRS 18A.230 to 18A.275].~~