

1 AN ACT relating to retirement income savings plans for private sector employees.

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

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

5 *There is hereby established in the office of the State Treasurer a retirement savings*
6 *plan in the form of a voluntary payroll-deduction Roth IRA, known as the*
7 *Commonwealth Retirement Savings Plan. The plan shall be administered by the*
8 *Commonwealth Retirement Savings Plan board of trustees established in Section 4 of*
9 *this Act, for the purpose of promoting greater retirement savings for private sector*
10 *employees of small businesses in a convenient, voluntary, low cost, and portable*
11 *manner.*

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

14 *As used in Sections 1 to 11 of this Act:*

15 *(1) "Board" means the Commonwealth Retirement Savings Plan board of trustees*
16 *established in Section 4 of this Act;*

17 *(2) "Employee":*

18 *(a) Means an individual who is employed by a participating employer and is*
19 *eighteen (18) years of age or older before the beginning of a calendar year;*
20 *and*

21 *(b) Does not include any individual:*

22 *1. Covered under the federal Railway Labor Act, or any individual*
23 *engaged in interstate commerce so as not to be subject to the*
24 *legislative powers of this state, except to the extent application of*
25 *Sections 1 to 11 of this Act is authorized under federal law;*

26 *2. Covered by a valid collective bargaining agreement that expressly*
27 *provides for a multiemployer Taft-Hartley pension plan; or*

1 3. Contributing to a state-administered retirement system as defined in
2 KRS 7A.210, a local government retirement system subject to KRS
3 65.156(1), or the Kentucky Public Employees Deferred Compensation
4 System under KRS 18A.230 to 18A.275;

5 (3) "Employer":

6 (a) Means an individual or entity who has fewer than fifty (50) employees and
7 is engaged in a business, industry, profession, trade, or other enterprise in
8 this state, whether for profit or nonprofit;

9 (b) Does not include:

10 1. The federal government or any department, agency, or instrumentality
11 thereof;

12 2. Any state government or any department, agency, or instrumentality
13 thereof;

14 3. Any local government including but not limited to any city, county,
15 urban-county government, charter county government, consolidated
16 local government, special district, or quasi-governmental body
17 authorized by the Kentucky Revised Statutes or a local ordinance;

18 4. Any agency participating in a state-administered retirement system as
19 defined in KRS 7A.210, a local government retirement system subject
20 to KRS 65.156(1), or the Kentucky Public Employees Deferred
21 Compensation System under KRS 18A.230 to 18A.275; or

22 5. Any other governmental agency of the Commonwealth of Kentucky;

23 (4) "Enrollee" means any employee who has affirmatively elected to participate in
24 the plan as provided in Section 8 of this Act;

25 (5) "ERISA" means the Employee Retirement Income Security Act of 1974;

26 (6) "Fund" means the Commonwealth Retirement Savings Plan fund established in
27 Section 3 of this Act;

1 (7) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
2 amended;

3 (8) "IRA" has the same meaning as "Roth IRA" as defined in Section 408A of the
4 Internal Revenue Code;

5 (9) "Participating employer" means an employer that has voluntarily elected to
6 provide a payroll-deduction retirement savings arrangement for enrollees under
7 Sections 1 to 11 of this Act;

8 (10) "Payroll-deduction retirement savings arrangement" means an arrangement by
9 which an employer allows enrollees, at their election, to remit payroll deduction
10 contributions to the plan;

11 (11) "Plan" means the Commonwealth Retirement Savings Plan established in
12 Sections 1 to 11 of this Act;

13 (12) "Vendor":

14 (a) Means a registered investment company, life insurance company, bank,
15 trust company, or qualified third-party administrator authorized to do
16 business in Kentucky that provides or administers retirement investment
17 products, including payroll services or recordkeeping services; and

18 (b) Does not include individual registered representatives, brokers, financial
19 planners, or agents; and

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

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

25 (1) The Commonwealth Retirement Savings Plan fund is hereby established as a
26 trust fund outside the State Treasury, to be administered by the board established
27 in Section 4 of this Act as its trustee.

1 (2) The fund shall consist of individual Roth IRAs of enrollees, each consisting of
2 private moneys in the fund received from enrollees and participating employers
3 on behalf of enrollees pursuant to a payroll-deduction retirement savings
4 arrangement made at the election of the enrollee under Sections 1 to 11 of this
5 Act. The fund shall be administered in a manner determined by the board,
6 provided that the accounts meet the requirements of Section 408A of the Internal
7 Revenue Code.

8 (3) The Commonwealth shall not have a claim to or against, or interest in any
9 amount deposited into the fund, and amounts on deposit in the fund shall not be
10 commingled with any public funds.

11 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) (a) The Commonwealth Retirement Savings Plan shall be administered by a
14 board of trustees consisting of the following seven (7) members:
15 1. The State Treasurer, ex officio, who shall serve as chair;
16 2. The secretary of the Education and Labor Cabinet, ex officio;
17 3. The secretary of the Finance and Administration Cabinet, ex officio;
18 4. Two (2) at-large members appointed by the Governor, subject to
19 Senate confirmation in accordance with KRS 11.160, who have
20 expertise in the field of retirement savings plan administration or
21 investment;
22 5. One (1) at-large member appointed by the State Treasurer who is a
23 member of the general public; and
24 6. One (1) at-large member appointed by the State Treasurer who is a
25 small business owner.

26 (b) As used in paragraph (a) of this subsection, a member with "expertise in the
27 field of retirement savings plan administration or investment" means an

1 individual who has at least ten (10) years of experience in one (1) of the
2 following areas of expertise:

- 3 1. A portfolio manager acting in a fiduciary capacity;
- 4 2. A professional securities analyst or investment consultant;
- 5 3. A current or retired employee or principal of a trust institution,
6 investment, or finance organization, or endowment fund acting in an
7 investment-related capacity;
- 8 4. A current or retired university professor whose primary area of
9 emphasis is teaching investment-related studies; or
- 10 5. A chartered financial analyst in good standing as determined by the
11 CFA Institute.

12 (c) Each ex officio member may designate a proxy by written notice to the
13 board prior to the call of order of each meeting, and the proxy shall be
14 entitled to participate as a full voting member.

15 (2) The board is hereby granted the powers and privileges of a corporation, including
16 but not limited to the following powers:

- 17 (a) To sue and be sued in its corporate name;
- 18 (b) To make bylaws not inconsistent with the law;
- 19 (c) To conduct the business and promote the purposes for which it was formed;
- 20 (d) To make and execute contracts and other instruments necessary or
21 convenient to the exercise of its powers;
- 22 (e) To employ personnel and contract for professional, administrative, and
23 technical services;
- 24 (f) To purchase fiduciary liability insurance; and
- 25 (g) To act independently in the performance of its fiduciary and administrative
26 duties, subject to Sections 1 to 11 of this Act.

27 (3) A trustee, officer, employee, vendor, or other fiduciary shall discharge duties with

1 respect to the plan:

2 (a) Solely in the interest of the enrollees and beneficiaries;

3 (b) For the exclusive purpose of providing benefits to enrollees and
4 beneficiaries and paying reasonable expenses of administering the plan;

5 (c) With the care, skill, and caution under the circumstances then prevailing
6 that a prudent person acting in a like capacity and familiar with those
7 matters would use in the conduct of an activity of like character and
8 purpose;

9 (d) Impartially, taking into account any differing interests of enrollees and
10 beneficiaries;

11 (e) Incurring any costs that are appropriate and reasonable; and

12 (f) In accordance with a good-faith interpretation of the federal, state, and
13 common law governing the plan and fiduciaries.

14 (4) (a) At-large members of the board appointed by the Governor or State
15 Treasurer shall serve a term of four (4) years.

16 (b) Any vacancy that may occur for an at-large member of the board shall be
17 filled within thirty (30) days of the occurrence of the vacancy, in the same
18 manner as the original appointment and for the balance of the unexpired
19 term. If the vacancy is not filled by the appointing authority within thirty
20 (30) days of the occurrence, the board may fill the vacancy by majority vote
21 of the board.

22 (5) Board members shall serve without compensation but may be reimbursed for
23 actual and necessary expenses incurred in connection with their board duties
24 from funds provided pursuant to Section 5 of this Act.

25 (6) Membership on the board shall not be incompatible with any other office unless a
26 constitutional incompatibility exists. No member shall be subject to removal from
27 office except upon conviction of a felony or for a finding of a violation of KRS

1 11A.020 or 11A.040 by a court of competent jurisdiction.

2 (7) (a) The board shall meet at least once each quarter, and may hold additional
3 meetings upon the call of the chair.

4 (b) A majority of the entire membership of the board shall constitute a quorum
5 for the transaction of business, and all actions of the board shall be by
6 affirmative vote of a majority of the members present.

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

9 (1) The Commonwealth Retirement Savings Plan board of trustees shall, for
10 administrative purposes only, be attached to the office of the State Treasurer.

11 (2) Attachment for administrative purposes shall not be construed to confer policy
12 control, investment authority, or fiduciary responsibility upon the Commonwealth
13 or the State Treasurer, except as it relates to the State Treasurer's role as a
14 trustee of the plan.

15 (3) Except as provided in subsection (4) of this section, all routine administrative
16 expenses incurred on behalf of the plan shall be paid by the fund established in
17 Section 3 of this Act.

18 (4) In order to ensure implementation and success of the plan, initial costs to
19 implement the plan and initial and ongoing routine administrative expenses may
20 be funded wholly or in part from:

21 (a) Funding appropriated for the plan by the General Assembly;
22 (b) A loan for initial costs to implement the plan from the Kentucky Economic
23 Development Finance Authority under Section 12 of this Act; or
24 (c) Funding from efforts of the State Treasurer as provided in subsection (5) of
25 this section.

26 (5) The State Treasurer may pursue and accept contributions, grants, and other
27 donations, which shall be used to set up the plan and for the administrative costs

1 of the board, and he or she shall have full authority to create a nonprofit entity to
2 accept these contributions in accordance with federal and state law.

3 (6) Notwithstanding any other statute to the contrary, requests and authorization for
4 all expenditures from the fund relating to the administrative operations of the
5 plan shall be contained in the State Treasurer's biennial budget request and the
6 executive branch budget bill enacted by the General Assembly in accordance with
7 KRS Chapter 48.

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

10 **The board shall:**

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

12 (a) Accords with best practices for retirement savings vehicles;
13 (b) Maximizes participation, savings, and sound investment practices;
14 (c) Maximizes simplicity, including ease of compliance and use for
15 participating employers and enrollees;
16 (d) Provides an efficient and cost-effective product to enrollees;
17 (e) Ensures the portability of benefits; and
18 (f) Provides for the deaccumulation of enrollee assets in a manner that
19 maximizes financial security in retirement;

20 (2) Comply with all applicable federal law and regulations of the United States
21 Department of the Treasury;

22 (3) Make and enter into contracts necessary for the administration of the plan,
23 including selecting a plan vendor as provided by Section 7 of this Act;

24 (4) Evaluate and establish the process by which an enrollee is able to contribute a
25 portion of his or her wages to the plan for automatic deposit of those
26 contributions and the process by which the participating employer provides a
27 payroll-deduction retirement savings arrangement to forward those contributions

1 and related information to the plan;

2 (5) Design and establish the process for enrollment under Section 8 of this Act;

3 (6) Keep annual administrative expenses as low as possible;

4 (7) Facilitate education and outreach to employers, enrollees, and employees;

5 (8) Carry out the duties and obligations of the plan in an effective, efficient, and low
6 cost manner. This includes the authority to explore, with other state entities, the
7 potential efficiencies that might be achieved by combining vendor contracting
8 opportunities;

9 (9) Exercise any other powers reasonably necessary for the effectuation of the
10 purposes, objectives, and provisions of Sections 1 to 11 of this Act pertaining to
11 the plan;

12 (10) Conduct or cause to be conducted an audit of plan-related activities of any
13 vendor;

14 (11) Enter into information sharing agreements with any other state governmental
15 entity possessing data necessary for plan administration;

16 (12) Promulgate administrative regulations in accordance with KRS Chapter 13A as
17 necessary to implement Sections 1 to 11 of this Act;

18 (13) Annually adopt a written statement of investment policy that includes a risk
19 management and oversight program, which shall be designed to:

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

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

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

27 (14) Recommend to the General Assembly for legislative action nonpunitive incentives

1 *to encourage employer and employee participation, including but not limited to*
2 *tax credits.*

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

5 *(1) The board shall engage, through a procurement process in accordance with KRS*
6 *Chapter 45A, a vendor to administer the plan.*

7 *(2) Each vendor shall comply with all applicable federal and state laws, rules, and*
8 *regulations, as well as all administrative regulations promulgated by the board*
9 *with respect to the plan and the investment of the fund including but not limited*
10 *to the investment policy.*

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

13 *(4) The board shall require each vendor to maintain fiduciary liability insurance,*
14 *errors and omissions insurance, and cybersecurity insurance in amounts*
15 *determined appropriate by the board.*

16 *(5) Each vendor shall indemnify and hold harmless the plan, the board, and the*
17 *Commonwealth from claims arising from vendor negligence, breach of contract,*
18 *data breach, or violation of law.*

19 *(6) The board may require performance bonding or other financial assurance as a*
20 *condition of vendor engagement.*

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

23 *(1) The Commonwealth Retirement Savings Plan shall be implemented and*
24 *enrollment of employees shall begin on July 1, 2028, except that the board may*
25 *delay the implementation of the plan if the board does not obtain adequate funds*
26 *for implementation prior to July 1, 2028.*

27 *(2) The plan shall be made available to employers on a voluntary basis, and*

1 employers:

2 (a) May elect to become a participating employer and may withdraw
3 participation at any time;
4 (b) Shall not be required to establish a payroll-deduction retirement savings
5 arrangement after becoming a participating employer;
6 (c) Shall retain the option at all times to set up any type of employer-sponsored
7 retirement plan in lieu of participation in the Commonwealth Retirement
8 Savings Plan; and
9 (d) Shall provide employees with a copy of the employee information packet
10 described in subsection (6) of this section upon the implementation of the
11 plan or at the time of hiring.

12 (3) An employee of a participating employer:

13 (a) Shall enroll in the plan by affirmative election only; and
14 (b) May terminate his or her participation in the plan at any time in a manner
15 prescribed by the board.

16 (4) Enrollees in the plan shall select:

17 (a) A contribution level and may change their contribution level at any time,
18 subject to administrative regulations promulgated by the board. This level
19 may be set up to the deductible amount for the enrollee's taxable year under
20 Section 219(b)(1)(A) of the Internal Revenue Code; and
21 (b) An investment option or a mix of investment options contained within the
22 plan and may change their investment option at any time, subject to
23 administrative regulations promulgated by the board.

24 (5) The board shall:

25 (a) Prior to the opening of the plan for enrollment, develop, design, and
26 disseminate to all employers an employer information packet and an
27 employee information packet, which shall include background information

1 on the plan, appropriate disclosures for employees, information regarding
2 any plan-related website, and information required in subsection (6) of this
3 section;

4 (b) Ensure that an appropriate and diversified menu of investment options is
5 available to enrollees;

6 (c) Ensure that each enrollee affirmatively selects an investment option at the
7 time of enrollment; and

8 (d) Designate one (1) or more qualified target date funds that satisfy applicable
9 United States Department of Labor safe harbor standards as the
10 recommended default investment option for enrollees who request guidance.

11 (6) The employee information packet shall include but not be limited to the
12 following:

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

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

15 (c) How to participate in the plan;

16 (d) The process for withdrawal of retirement savings;

17 (e) How to obtain additional information about the plan;

18 (f) A statement advising employees seeking financial advice to contact a
19 financial advisor, and also stating that participating employers are not in a
20 position to provide financial advice and are not liable for the decisions
21 employees make under Sections 1 to 11 of this Act;

22 (g) A statement that the plan is not an employer-sponsored retirement plan;

23 (h) A statement that the plan fund is not guaranteed by the state;

24 (i) A statement that employees may enroll only by affirmative election; and

25 (j) A form for the employee to select his or her contribution level and
26 investment options.

27 (7) Individual participant account information, including contribution levels,

1 account balances, investment selections, and personally identifiable information
2 held by the plan or any vendor shall not constitute a public record under KRS
3 61.870 to 61.884. Aggregate or de-identified information may be disclosed for
4 reporting, auditing, or legislative oversight purposes.

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

7 (1) The debts, contracts, and obligations of the plan or the board are not the debts,
8 contracts, and obligations of the Commonwealth, and neither the faith and credit
9 nor the taxing power of the Commonwealth is pledged directly or indirectly to the
10 payment of any debts, contracts, and obligations of the plan or the board.

11 (2) No state board, commission, or agency, or any officer, employee, or member
12 thereof shall be liable for any loss or deficiency resulting from particular
13 investments selected under Sections 1 to 11 of this Act, except for any liability
14 that arises out of a breach of fiduciary duty under subsection (3) of Section 4 of
15 this Act.

16 (3) Sections 1 to 11 of this Act shall not be construed to guarantee any interest rate
17 or other rate of return on, or investment performance of, any contribution or
18 account balance.

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

21 (1) A participating employer shall not be a fiduciary, or considered to be a fiduciary,
22 over the plan, and the participating employer shall not be liable for or bear
23 responsibility for:

24 (a) An employee's decision to participate, or not participate, in the plan;
25 (b) The investment decisions of the board or of any enrollee;
26 (c) The administration, investment, investment returns, or investment
27 performance of the plan, including without limitation any interest rate or

1 other rate of return on any contribution or account balance;

2 (d) The plan design or benefits paid to plan employees or enrollees; or

3 (e) Any loss, deficiency, failure to realize any gain, or any other adverse
4 consequences, including without limitation any adverse tax consequences or
5 loss of favorable tax treatment, public assistance, or other benefits, incurred
6 by any person as a result of participating in the plan.

7 (2) Participation by multiple employers under Section 1 to 11 of this Act shall not be
8 construed as aggregation, sponsorship, endorsement, or maintenance of a
9 retirement plan under federal law, including any theory of aggregation advanced
10 by the United States Department of Labor.

11 (3) An employer's facilitation of payroll deductions under Sections 1 to 11 of this Act
12 shall not confer fiduciary status or constitute endorsement of the plan or any
13 investment option.

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

16 (1) Sections 1 to 11 of this Act shall not be construed to:

17 (a) Create or constitute an employee benefit plan under ERISA, or to confer
18 fiduciary status under ERISA upon the Commonwealth, the board, or any
19 participating employer; or

20 (b) Establish, maintain, endorse, or sponsor an employee benefit plan under
21 ERISA.

22 (2) The General Assembly reserves the right to amend, suspend, or reduce any
23 provision of Sections 1 to 11 of this Act if, in its judgment, the welfare of the
24 Commonwealth so demands.

25 ➔ Section 12. KRS 154.12-330 is amended to read as follows:

26 (1) (a) The Kentucky Economic Development Finance Authority is hereby
27 authorized to develop and fund a small business loan program to assist new or

1 existing small businesses operating in the Commonwealth.

2 **(b)** The authority may lend:

2. Funds to help implement the Commonwealth Retirement Savings Plan established to provide retirement savings options to small businesses under Sections 1 to 11 of this Act.

10 (2) The authority shall determine the terms, conditions, and requirements for loans
11 issued under this section, including collateral requirements when deemed
12 reasonable and appropriate. Recognizing that small businesses, while essential for
13 the economic vitality of the Commonwealth, may have difficulty obtaining
14 conventional loans, the authority may provide terms that are more lenient, high-risk,
15 less secure, or otherwise less stringent than industry standards.

16 (3) To be eligible for a loan under this section, a small business shall be engaged in
17 manufacturing, agribusiness, or service or technology, shall not be engaged
18 primarily in retail, and shall commit to creating and maintaining at least one (1)
19 new full-time job above the number existing on the date of application.

20 ➔Section 13. On or before July 1, 2027, the State Treasurer shall provide a
21 written update on the implementation of the Commonwealth Retirement Savings Plan to
22 the Legislative Research Commission, for referral to the appropriate committees of
23 jurisdiction. The update shall identify any administrative, financial, or legal issues in
24 implementing Sections 1 to 11 of this Act.