

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.