
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2396 Session of
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INTRODUCED BY HANNA, DRISCOLL, DERMODY, MARKOSEK, FRANKEL,
STURLA, YOUNGBLOOD, GOODMAN, ROZZI, D. MILLER, SCHLOSSBERG,
FLYNN, SCHWEYER, M. DALEY, McNEILL, COHEN AND SAVAGE,
OCTOBER 6, 2016

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 6, 2016

AN ACT

1 Establishing the Keystone Retirement Savings Program and the
2 Keystone Retirement Savings Program Fund; providing for
3 powers and duties of the Treasury Department and the
4 Department of Revenue; and imposing civil penalties.

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14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 CHAPTER 1

17 PRELIMINARY PROVISIONS

18 Section 101. Short title.

19 This act shall be known and may be cited as the Keystone
20 Retirement Savings Program Act.

21 Section 102. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Department." The Treasury Department of the Commonwealth.

26 "Eligible employee." A person who is 18 years of age or
27 older and employed by an eligible employer. The term includes an
28 employee of a small employer that opts to provide payroll
29 deposit retirement savings arrangements for its employees.

30 "Eligible employer." An entity engaged in a business,

1 industry, profession, trade or other enterprise in this
2 Commonwealth, whether for profit or not for profit, that
3 satisfies the following conditions:

4 (1) Employs at least five employees.

5 (2) Has been in business at least one full calendar
6 year.

7 (3) Has not offered a qualified retirement plan,
8 including, without limitation, a plan qualified under any of
9 the following provisions of the Internal Revenue Code of 1986
10 (Public Law 99-514, 26 U.S.C. § 1 et seq.) in the preceding
11 calendar year:

12 (i) Section 401(a) or (k) (26 U.S.C. § 401(a) or
13 (k)).

14 (ii) Section 403(a) or (b) (26 U.S.C. § 403(a) or
15 (b)).

16 (iii) Section 408(k) or (p) (26 U.S.C. § 408(k) or
17 (p)).

18 (iv) Section 457(b) (26 U.S.C. § 457(b)).

19 "Enrollee." An eligible employee who is enrolled in the
20 program.

21 "Fund." The Keystone Retirement Savings Program Fund
22 established in section 302.

23 "IRA." A Roth individual retirement account under section
24 408A of the Internal Revenue Code of 1986 (26 U.S.C. § 408A).

25 "Participating employer." An eligible employer or small
26 employer that provides a payroll deposit retirement savings
27 arrangement for its employees who are enrollees in the program.

28 "Payroll deposit retirement savings arrangement." An
29 arrangement by which a participating employer allows enrollees
30 to remit payroll deduction contributions to the program.

1 "Program." The Keystone Retirement Savings Program
2 established in section 301.

3 "Small employer." An entity engaged in a business, industry,
4 profession, trade or other enterprise in this Commonwealth,
5 whether for profit or not for profit, that:

6 (1) employs less than five employees; or

7 (2) has been in business less than one full calendar
8 year and notifies the department of the employer's interest
9 in being a participating employer.

10 CHAPTER 3

11 KEYSTONE RETIREMENT SAVINGS PROGRAM

12 Section 301. Establishment of program.

13 A retirement savings program in the form of an automatic
14 enrollment payroll deduction IRA, known as the Keystone
15 Retirement Savings Program, is hereby established. The program
16 shall be administered by the department for the purpose of
17 promoting greater retirement savings for eligible employees in a
18 convenient, low-cost and portable manner.

19 Section 302. Keystone Retirement Savings Program Fund.

20 (a) Establishment.--The Keystone Retirement Savings Program
21 Fund is hereby established as a special fund in the State
22 Treasury. The fund is declared to be a spendthrift trust, and
23 any construction of an enrollee's program account as self-
24 settled shall not cause the program account to be treated as
25 other than a spendthrift trust. The fund shall include the
26 individual retirement accounts of enrollees, which shall be
27 accounted for as individual accounts. Money in the fund shall
28 consist of money received from enrollees through participating
29 employers.

30 (b) Amounts on deposit.--The amounts deposited in the fund

1 shall not constitute property of the Commonwealth, and the fund
2 shall not be construed to be an agency or instrumentality of the
3 Commonwealth. Amounts on deposit in the fund shall not be
4 commingled with Commonwealth funds, and the Commonwealth shall
5 have no claim to or against, or interest in, such funds.

6 Section 303. Program administration.

7 (a) Duty of department.--Subject to the provisions of this
8 act, the department shall implement and administer the program
9 in a manner as it determines, provided that the fund is operated
10 such that the accounts of enrollees meet the requirements for an
11 IRA under the Internal Revenue Code of 1986 (Public Law 99-514,
12 26 U.S.C. § 1 et seq.).

13 (b) Operating and administrative costs.--The department
14 shall, through the Governor, annually submit to the General
15 Assembly a budget covering the operating and administrative
16 expenses of the program. Upon approval by the General Assembly
17 in an appropriation bill, expenses as incurred by the program,
18 commencing one year after the department begins accepting
19 enrollees into the program, shall be paid from the fees, charges
20 and investment earnings of the fund or from any other available
21 funds.

22 (c) Repayment of initial appropriation.--The department
23 shall repay to the General Fund any money appropriated for the
24 initial planning, organization and administration of the fund.
25 The repayment shall be made from the fees, charges and
26 investment earnings of the fund within ten years of the
27 effective date of this section.

28 Section 304. Fiduciary duty.

29 The department, employees of the department and agents of and
30 investment managers retained by the department shall stand in a

1 fiduciary relationship to and shall discharge their duties with
2 respect to the program solely in the interest of the program's
3 enrollees and beneficiaries:

4 (1) for the exclusive purposes of providing benefits to
5 enrollees and beneficiaries and defraying reasonable expenses
6 of administering the program; and

7 (2) by exercising that degree of judgment, skill and
8 care under the circumstances then prevailing, which persons
9 of prudence, discretion and intelligence, who are familiar
10 with such matters, exercise in the management of their own
11 affairs not in regard to speculation, but in regard to the
12 permanent disposition of the funds, considering the probable
13 safety of their capital.

14 Section 305. Powers and duties of department.

15 The department shall have the power and duty:

16 (1) To cause the program to be designed, established and
17 operated in a manner that:

18 (i) Complies with all applicable sections of the
19 Internal Revenue Code of 1986 (Public Law 99-514, 26
20 U.S.C. § 1 et seq.).

21 (ii) Accords with best practices for retirement
22 savings vehicles.

23 (iii) Maximizes participation, savings and sound
24 investment practices.

25 (iv) Maximizes ease of administration for
26 participating employers and enrollees.

27 (v) Provides an efficient product to enrollees by
28 pooling investment funds.

29 (vi) Ensures the portability of benefits.

30 (vii) Distributes enrollee assets in a manner that

1 maximizes financial security in retirement.

2 (2) To make and enter into contracts necessary for the
3 administration of the program and fund, including, but not
4 limited to, retaining and contracting with investment
5 managers, private financial institutions, other financial and
6 service providers, consultants, actuaries, counsel, auditors,
7 third-party administrators and other professionals as
8 necessary.

9 (3) To conduct a performance review of each investment
10 manager no less than once every three years, which shall
11 include without limitation a review of returns, fees and
12 customer service. A copy of each performance review shall be
13 posted on the department's publicly accessible Internet
14 website.

15 (4) To design and establish the process for enrollment,
16 including the process by which an eligible employee can opt
17 not to participate in the program, select a contribution
18 level, select an investment option and terminate
19 participation in the program.

20 (5) To allocate administrative costs to individual
21 retirement accounts in the fund on a pro rata basis. Annual
22 administrative costs of the department shall not exceed 0.1%
23 of the total fund balance.

24 (6) To facilitate education and outreach to employers
25 and employees.

26 (7) To facilitate compliance by the program with all
27 applicable requirements for the program under the Internal
28 Revenue Code of 1986, including tax qualification
29 requirements or any other applicable law and accounting
30 requirements.

1 (8) To carry out the duties and obligations of the
2 program in an effective, efficient and low-cost manner.

3 (9) To exercise any and all other powers reasonably
4 necessary for the effectuation of the purposes, objectives
5 and provisions of this act pertaining to the program.

6 Section 306. Risk management.

7 The department shall annually prepare and adopt a written
8 statement of investment policy that includes a risk management
9 and oversight program. The risk management and oversight program
10 shall be designed to ensure that an effective risk management
11 system is in place to monitor the risk levels of the program and
12 fund portfolio, to ensure that the risks taken are prudent and
13 properly managed, to provide an integrated process for overall
14 risk management and to assess investment returns as well as risk
15 to determine if the risks taken are adequately compensated
16 compared to applicable performance benchmarks and standards.

17 Section 307. Investment managers.

18 (a) Engagement.--The department shall have sole and
19 exclusive discretion to engage investment managers.

20 (b) Fees and charges.--An investment manager's fees and
21 charges shall not exceed 0.5% of fund assets under management.

22 (c) Duty of compliance.--An investment manager shall comply
23 with applicable Federal and State laws and regulations, as well
24 as rules, policies and guidelines promulgated by the department
25 with respect to the program and the investment of the fund,
26 including, but not limited to, the investment policy.

27 (d) Oversight.--An investment manager shall provide reports
28 to and appear before department personnel as the department
29 deems necessary or desirable for it to oversee each investment
30 manager's performance and the performance of the fund.

1 Section 308. Investment options.

2 (a) General rule.--The department shall establish the
3 following investment options:

4 (1) A life-cycle fund with a target date based upon the
5 age of the enrollee.

6 (2) An equity index fund.

7 (3) A bond index fund.

8 (4) Other investment options as the department deems
9 necessary or desirable.

10 (b) Default investment option.--The department shall select,
11 and may change from time to time at the department's discretion,
12 the default investment option for enrollees who do not elect an
13 investment option.

14 Section 309. Benefits.

15 Interest, investment earnings and investment losses shall be
16 allocated to individual program accounts for each enrollee as
17 established by the department. An enrollee's retirement savings
18 benefit under the program shall be an amount equal to the
19 balance in the enrollee's program account on the date the
20 retirement savings benefit becomes payable. The Commonwealth
21 shall have no liability for the payment of any benefit to any
22 enrollee or beneficiary in the program.

23 Section 310. Program enrollment and participation.

24 Except as otherwise provided in this act, the program shall
25 be implemented and enrollment of eligible employees shall begin
26 no later than 24 months after the effective date of this
27 section. The following apply after the department opens the
28 program for enrollment:

29 (1) Each eligible employer shall establish a payroll
30 deposit retirement savings arrangement to allow each eligible

1 employee to participate in the program no later than nine
2 months after the department opens the program for enrollment.

3 (2) An eligible employer shall automatically enroll in
4 the program each eligible employee who has not opted out of
5 participation in the program and shall provide payroll
6 deposit retirement savings arrangements for those employees
7 and deposit, on behalf of those employees, funds into the
8 program. A small employer may, but is not required to,
9 provide payroll deposit retirement savings arrangements for
10 each eligible employee who elects to participate in the
11 program.

12 (3) An enrollee has the ability to select or change the
13 enrollee's contribution level, subject to rules of the
14 department. If an enrollee fails to select a contribution
15 level, then the default contribution level shall be 3%, or
16 such other percentage as the department may determine, of the
17 employee's wages up to the annual limits permitted by the
18 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
19 1 et seq.).

20 (4) An enrollee may select an investment option from the
21 investment options selected by the department. An enrollee
22 may change the investment option at any time, subject to
23 rules of the department. In the event that an enrollee fails
24 to select an investment option, the enrollee shall be placed
25 in the default investment option selected by the department.

26 (5) Following initial implementation of the program
27 under this section, at least once every year, participating
28 employers shall designate an open enrollment period during
29 which eligible employees who previously opted out of the
30 program may enroll in the program.

1 (6) An eligible employee who opts out of the program who
2 subsequently wants to participate through the participating
3 employer's payroll deposit retirement savings arrangement may
4 only enroll during the participating employer's designated
5 open enrollment period or, if permitted by the participating
6 employer, at an earlier time.

7 (7) An employer shall retain the option at all times to
8 set up any type of employer-sponsored retirement plan, such
9 as a defined benefit plan, 401(k) plan, Simplified Employee
10 Pension (SEP) plan or Savings Incentive Match Plan for
11 Employees (SIMPLE) plan, or to offer an automatic enrollment
12 payroll deduction IRA, instead of having a payroll deposit
13 retirement savings arrangement to allow employee
14 participation in the program.

15 (8) An employee may terminate participation in the
16 program at any time in a manner prescribed by the department.

17 Section 311. Payments.

18 Employee contributions deducted by a participating employer
19 through payroll deduction shall be paid by the participating
20 employer to the fund using one or more payroll deposit
21 retirement savings arrangements established by the department,
22 in cooperation and coordination with the Department of Revenue,
23 either:

24 (1) on or before the last day of the month following the
25 month in which the compensation otherwise would have been
26 payable to the employee in cash; or

27 (2) before such later deadline prescribed by the
28 department for making payments, but not later than the due
29 date for the deposit of tax required to be deducted and
30 withheld relating to collection of income tax at source on

1 wages or for the deposit of tax required to be paid under the
2 unemployment insurance system for the payroll period to which
3 the payments relate.

4 Section 312. Duty and liability of Commonwealth.

5 (a) Payments.--The Commonwealth shall have no duty or
6 liability to any party for the payment of any retirement savings
7 benefits accrued by any individual under the program. Any
8 financial liability for the payment of retirement savings
9 benefits in excess of funds available under the program shall be
10 borne solely by the entities with whom the department contracts
11 to provide insurance to protect the value of the program.

12 (b) Liability.--No Commonwealth board, commission or agency,
13 or any officer, employee or member thereof, is liable for any
14 loss or deficiency resulting from particular investments
15 selected under this act, except for any liability that arises
16 out of a breach of fiduciary duty under this act.

17 Section 313. Duty and liability of participating employers.

18 (a) Liability.--Participating employers shall not have any
19 liability for an employee's decision to participate in, or opt
20 out of, the program or for the investment decisions of the
21 department or of any enrollee.

22 (b) Fiduciary and other responsibility.--A participating
23 employer shall not be a fiduciary, or considered to be a
24 fiduciary, with respect to the program. A participating employer
25 shall not bear responsibility for the administration, investment
26 or investment performance of the program. A participating
27 employer shall not be liable with regard to investment returns,
28 program design and benefits paid to program participants.

29 Section 314. Audit and reports.

30 (a) Reports to Governor and General Assembly.--The

1 department shall annually submit the following to the Governor
2 and the General Assembly:

3 (1) An audited financial report, prepared by the Auditor
4 General in accordance with generally accepted accounting
5 principles, of the program for each calendar year by July 1
6 of the next following year.

7 (2) A report prepared by the department, which shall
8 include, but is not limited to, the following:

9 (i) A summary of the benefits provided by the
10 program, including the number of enrollees in the
11 program.

12 (ii) The percentage and amounts of investment
13 options and rates of return, net of fees.

14 (iii) Any other information that is relevant to make
15 a full, fair and effective disclosure of the operations
16 of the program and the fund.

17 (b) Reports to employers and enrollees.--In addition to any
18 other statements or reports required by law, the department
19 shall provide periodic reports at least annually as follows:

20 (1) To participating employers, a report of the names of
21 each enrollee employed by the participating employer and the
22 amounts of contributions made by the participating employer
23 on behalf of each employee during the reporting period.

24 (2) To enrollees, a report of contributions and
25 investment income allocated to, withdrawals from and balances
26 in their program accounts for the reporting period.

27 (c) Additional information.--The department may include in a
28 report under subsection (b) any other information regarding the
29 program as the department may determine.

30 CHAPTER 5

ENFORCEMENT

Section 501. Civil penalties.

(a) Fines.--An eligible employer who fails without reasonable cause to timely enroll an eligible employee in the program shall be subject to the following fines:

(1) Seventy-five dollars for each employee for the first calendar year or portion of the first calendar year during which the employee neither was enrolled in the program nor had elected out of participation in the program.

(2) Two hundred dollars for each employee for the second calendar year or portion of the second calendar year during which the employee continues to be not enrolled without electing out of participation in the program.

(3) Three hundred fifty dollars for each employee for the third calendar year and each calendar year thereafter, or portion of the third or subsequent calendar year, during which the employee continues to be not enrolled without electing out of participation in the program.

(b) Notice and assessment.--

(1) After determining that an employer is subject to penalty under this section for a calendar year, the department shall issue a notice of proposed assessment to the employer. Upon the expiration of 90 days after the date on which a notice of proposed assessment is issued, the penalties specified in the notice shall be deemed assessed, unless the employer files a protest with the department.

(2) If, within 90 days after the date on which it was issued, a protest of a notice of proposed assessment is filed under subsection (c), the penalties specified in the notice shall be deemed assessed upon the date when the decision of

1 the department with respect to the protest becomes final.

2 (c) Protest and hearing.--A written protest against the
3 proposed assessment shall be filed with the department in the
4 form prescribed by department, setting forth the grounds on
5 which the protest is based. If the protest is filed within 90
6 days after the date the notice of proposed assessment is issued,
7 the department shall reconsider the proposed assessment and
8 shall grant the employer a hearing. As soon as practicable after
9 the reconsideration and hearing, the department shall issue a
10 notice of decision to the employer, setting forth the
11 department's findings of fact and the basis of decision, which
12 decision shall be final.

13 (d) Notice to demand payment.--As soon as practicable after
14 the penalties specified in a notice of proposed assessment are
15 deemed assessed, the department shall give notice to the
16 employer liable for any unpaid portion of the assessment,
17 stating the amount due and demanding payment. If an employer
18 neglects or refuses to pay the entire liability shown on the
19 notice and demand within 10 days after the notice and demand is
20 issued, the unpaid amount of the liability shall be a lien in
21 favor of the Commonwealth upon all property and rights to
22 property, whether real or personal, belonging to the employer,
23 and the provisions of the act of April 9, 1929 (P.L.343,
24 No.176), known as The Fiscal Code, regarding liens, levies and
25 collection actions with regard to assessed and unpaid
26 liabilities under that act, including the periods for taking any
27 action, shall apply.

28 (e) Mailing of notice.--Whenever notice is required by this
29 section, it may be given or issued by mailing it by first class
30 mail addressed to the person concerned at the last known address

1 of the person.

2 (f) Right of inspection.--All books and records and other
3 papers and documents relevant to the determination of any
4 penalty due under this section shall, at all times during
5 business hours of the day, be subject to inspection by the
6 department or its duly authorized agents and employees.

7 (g) Tax forms.--The department may require employers to
8 report information relevant to their compliance with this act on
9 returns otherwise due from the employers under the act of March
10 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and
11 failure to provide the requested information on a return shall
12 cause such return to be deemed not accepted. The Department of
13 Revenue shall coordinate and cooperate with the department to
14 revise the form of such returns as necessary.

15 (h) Tax liability.--For purposes of any provision of law
16 allowing the department or any other agency of this Commonwealth
17 to offset an amount owed to a taxpayer against a tax liability
18 of that taxpayer or allowing the department to offset an
19 overpayment of tax against any liability owed to the
20 Commonwealth, a penalty assessed under this section shall be
21 deemed to be a tax liability of the employer and any refund due
22 to an employer shall be deemed to be an overpayment of tax of
23 the employer.

24 (i) Confidential information.--Except as provided in this
25 subsection, all information received by the department from
26 returns filed by an employer or from any investigation conducted
27 under the provisions of this act shall be confidential, except
28 for official purposes within the department or pursuant to
29 official procedures for collection of penalties assessed under
30 this act. Nothing contained in this subsection shall prevent the

1 department from publishing or making available to the public
2 reasonable statistics concerning the operation of this act
3 wherein the contents of returns are grouped into aggregates in
4 such a way that the specific information of any employer shall
5 not be disclosed. Nothing contained in this subsection shall
6 prevent the State Treasurer from divulging information to an
7 authorized representative of the employer or to any person
8 pursuant to a request or authorization made by the employer or
9 by an authorized representative of the employer.

10 Section 502. Disposition of fines collected.

11 Civil penalties collected under this act shall be used by the
12 department to cover or defray expenses it incurs in the
13 performance of its duties under this act.

14 CHAPTER 21

15 MISCELLANEOUS PROVISIONS

16 Section 2101. Regulations.

17 The department and the Department of Revenue shall promulgate
18 regulations and adopt any policies or guidelines that may be
19 necessary or desirable to implement this act. The Department of
20 Revenue shall coordinate and cooperate with the department as
21 necessary to implement this act.

22 Section 2102. Federal considerations.

23 The department shall request in writing an opinion or ruling
24 from the appropriate entity with jurisdiction over the Employee
25 Retirement Income Security Act of 1974 (ERISA) (Public Law 93-
26 406, 88 Stat. 829) regarding the applicability of ERISA to the
27 program. The department may not implement the program if the IRA
28 arrangements offered under the program fail to qualify for the
29 favorable Federal income tax treatment ordinarily accorded to
30 IRAs under the Internal Revenue Code of 1986 (Public Law 99-514,

1 26 U.S.C. § 1 et seq.) or if it is determined that the program
2 is an employee benefit plan and State or employer liability is
3 established under ERISA.

4 Section 2103. Notice of program implementation.

5 (a) Publication in Pennsylvania Bulletin.--Upon the
6 implementation of the program in accordance with section 310,
7 the department shall publish notice in the Pennsylvania Bulletin
8 advising of the date of implementation of the program.

9 (b) Internet posting.--The department shall post notice of
10 the date of implementation of the program on its publicly
11 accessible Internet website. The notice shall include a
12 statement that rather than enrolling employees in the program
13 employers may sponsor an alternative arrangement, including, but
14 not limited to, a defined benefit plan, 401(k) plan, Simplified
15 Employee Pension (SEP) plan, Savings Incentive Match Plan for
16 Employees (SIMPLE) plan or automatic payroll deduction IRA
17 offered through a private provider.

18 Section 2104. Effective date.

19 This act shall take effect as follows:

20 (1) Section 501 shall take effect nine months after the
21 department publishes the notice required under section 2103.

22 (2) The remainder of this act shall take effect
23 immediately.