
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 465 Session of
2017

INTRODUCED BY HANNA, DRISCOLL, MARKOSEK, LONGIETTI, CALTAGIRONE,
GOODMAN, YOUNGBLOOD, STURLA, McNEILL, SCHLOSSBERG, DERMODY,
DAVIS, McCARTER, WARREN, KORTZ, FRANKEL, SOLOMON, GALLOWAY,
FREEMAN, COMITTA, KAVULICH, SCHWEYER, READSHAW AND DEAN,
FEBRUARY 13, 2017

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 13, 2017

AN ACT

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

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17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 CHAPTER 1

20 PRELIMINARY PROVISIONS

21 Section 101. Short title.

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

24 Section 102. Definitions.

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

28 "Administrative fund." The Keystone Retirement Savings
29 Program Administrative Fund established under section 303.

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

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

5 "Eligible employer." An entity engaged in a business,
6 industry, profession, trade or other enterprise in this
7 Commonwealth, whether for profit or not for profit, that
8 satisfies the following conditions:

9 (1) Employs at least five employees.

10 (2) Has been in business at least one full calendar
11 year.

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

17 (i) Section 401(a) or (k) (26 U.S.C. § 401(a) or
18 (k)).

19 (ii) Section 403(a) or (b) (26 U.S.C. § 403(a) or
20 (b)).

21 (iii) Section 408(k) or (p) (26 U.S.C. § 408(k) or
22 (p)).

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

24 "Enrollee." An eligible employee who is enrolled in the
25 program.

26 "Fund." The Keystone Retirement Savings Program Fund
27 established in section 302.

28 "IRA." A Roth individual retirement account under section
29 408A of the Internal Revenue Code of 1986 (26 U.S.C. § 408A).

30 "Participating employer." An eligible employer or small

1 employer that provides a payroll deposit retirement savings
2 arrangement for its employees who are enrollees in the program.

3 "Payroll deposit retirement savings arrangement." An
4 arrangement by which a participating employer allows enrollees
5 to remit payroll deduction contributions to the program.

6 "Program." The Keystone Retirement Savings Program
7 established in section 301.

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

- 11 (1) employs less than five employees; or
- 12 (2) has been in business less than one full calendar
13 year and notifies the department of the employer's interest
14 in being a participating employer.

15 CHAPTER 3

16 KEYSTONE RETIREMENT SAVINGS PROGRAM

17 Section 301. Establishment of program.

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

24 Section 302. Keystone Retirement Savings Program Fund.

25 (a) Establishment.--The Keystone Retirement Savings Program
26 Fund is established as a special fund in the State Treasury. The
27 fund is declared to be a spendthrift trust, and construction of
28 an enrollee's program account as self-settled shall not cause
29 the program account to be treated as other than a spendthrift
30 trust. The fund shall include the individual retirement accounts

1 of enrollees, which shall be accounted for as individual
2 accounts. Money in the fund shall consist of money received from
3 enrollees through participating employers.

4 (b) Amounts on deposit.--The amounts deposited in the fund
5 shall not constitute property of the Commonwealth, and the fund
6 shall not be construed to be an agency or instrumentality of the
7 Commonwealth. Amounts on deposit in the fund shall not be
8 commingled with Commonwealth funds, and the Commonwealth shall
9 have no claim to or against, or interest in, the funds.

10 Section 303. Keystone Retirement Savings Program Administrative
11 Fund.

12 The Keystone Retirement Savings Program Administrative Fund
13 is established as a separate trust fund in State Treasury. The
14 department shall use money in the administrative fund to pay for
15 start-up and ongoing administrative expenses incurred in
16 performing the duties of the department or the Department of
17 Revenue under this act. The administrative fund may receive
18 money designated for administrative purposes from the
19 Commonwealth or a unit of Federal or local government or any
20 other person, firm, partnership or corporation. Interest
21 earnings that are attributable to money in the administrative
22 fund shall be deposited into the administrative fund.

23 Section 304. Program administration.

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

30 (b) Operating and administrative costs.--The department

1 shall, through the Governor, annually submit to the General
2 Assembly a budget covering the operating and administrative
3 expenses of the program. Upon approval by the General Assembly
4 in an appropriation bill, expenses as incurred by the program,
5 commencing one year after the department begins accepting
6 enrollees into the program, shall be paid from the fees, charges
7 and investment earnings of the fund or from other available
8 funds.

9 (c) Repayment of initial appropriation.--The department
10 shall repay to the General Fund money appropriated for the
11 initial planning, organization and administration of the fund.
12 The repayment shall be made from the fees, charges and
13 investment earnings of the fund within 10 years of the effective
14 date of this section.

15 Section 305. Fiduciary duty.

16 The department, employees of the department and agents of and
17 investment managers retained by the department shall stand in a
18 fiduciary relationship to and shall discharge their duties with
19 respect to the program solely in the interest of the program's
20 enrollees and beneficiaries:

21 (1) for the exclusive purposes of providing benefits to
22 enrollees and beneficiaries and defraying reasonable expenses
23 of administering the program; and

24 (2) by exercising that degree of judgment, skill and
25 care under the circumstances then prevailing, which persons
26 of prudence, discretion and intelligence, who are familiar
27 with the matters, exercise in the management of their own
28 affairs not in regard to speculation, but in regard to the
29 permanent disposition of the funds, considering the probable
30 safety of their capital.

1 Section 306. Powers and duties of department.

2 The department shall have the power and duty:

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

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

8 (ii) Accords with best practices for retirement
9 savings vehicles.

10 (iii) Maximizes participation, savings and sound
11 investment practices.

12 (iv) Maximizes ease of administration for
13 participating employers and enrollees.

14 (v) Provides an efficient product to enrollees by
15 pooling investment funds.

16 (vi) Ensures the portability of benefits.

17 (vii) Distributes enrollee assets to maximize
18 financial security in retirement.

19 (2) To make and enter into contracts necessary for the
20 administration of the program and fund, including, but not
21 limited to, retaining and contracting with investment
22 managers, private financial institutions, other financial and
23 service providers, consultants, actuaries, counsel, auditors,
24 third-party administrators and other professionals as
25 necessary.

26 (3) To conduct a performance review of each investment
27 manager no less than once every three years, which shall
28 include without limitation a review of returns, fees and
29 customer service. A copy of each performance review shall be
30 posted on the department's publicly accessible Internet

1 website.

2 (4) To design and establish the process for enrollment,
3 including the process by which an eligible employee can opt
4 not to participate in the program, select a contribution
5 level, select an investment option and terminate
6 participation in the program.

7 (5) To allocate administrative costs to individual
8 retirement accounts in the fund on a pro rata basis. Annual
9 administrative costs of the department shall not exceed 0.1%
10 of the total fund balance.

11 (6) To facilitate education and outreach to employers
12 and employees.

13 (7) To facilitate compliance by the program with all
14 applicable requirements for the program under the Internal
15 Revenue Code of 1986, including tax qualification
16 requirements or other applicable law and accounting
17 requirements.

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

20 (9) To exercise any other powers reasonably necessary
21 for the effectuation of the purposes, objectives and
22 provisions of this act pertaining to the program.

23 Section 307. Risk management.

24 The department shall annually prepare and adopt a written
25 statement of investment policy that includes a risk management
26 and oversight program. The risk management and oversight program
27 shall be designed to ensure that an effective risk management
28 system is in place to monitor the risk levels of the program and
29 fund portfolio, to ensure that the risks taken are prudent and
30 properly managed, to provide an integrated process for overall

1 risk management and to assess investment returns as well as risk
2 to determine if the risks taken are adequately compensated
3 compared to applicable performance benchmarks and standards.

4 Section 308. Investment managers.

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

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

9 (c) Duty of compliance.--An investment manager shall comply
10 with applicable Federal and State laws and regulations, as well
11 as rules, policies and guidelines promulgated by the department
12 with respect to the program and the investment of the fund,
13 including, but not limited to, the investment policy.

14 (d) Oversight.--An investment manager shall provide reports
15 to and appear before department personnel as the department
16 deems necessary or desirable for the department to oversee each
17 investment manager's performance and the performance of the
18 fund.

19 Section 309. Investment options.

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

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

24 (2) An equity index fund.

25 (3) A bond index fund.

26 (4) Other investment options as the department deems
27 necessary or desirable.

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

1 investment option.

2 Section 310. Benefits.

3 Interest, investment earnings and investment losses shall be
4 allocated to individual program accounts for each enrollee as
5 established by the department. An enrollee's retirement savings
6 benefit under the program shall be an amount equal to the
7 balance in the enrollee's program account on the date the
8 retirement savings benefit becomes payable. The Commonwealth
9 shall have no liability for the payment of a benefit to an
10 enrollee or beneficiary in the program.

11 Section 311. Program enrollment and participation.

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

17 (1) Each eligible employer shall establish a payroll
18 deposit retirement savings arrangement to allow each eligible
19 employee to participate in the program no later than nine
20 months after the department opens the program for enrollment.

21 (2) Within 15 days following completion of the
22 requirement in paragraph (1), an eligible employer shall
23 automatically enroll in the program each eligible employee
24 who has not opted out of participation in the program and
25 shall provide payroll deposit retirement savings arrangements
26 for those employees and deposit, on behalf of those
27 employees, funds into the program. A small employer may, but
28 is not required to, provide payroll deposit retirement
29 savings arrangements for each eligible employee who elects to
30 participate in the program.

1 (3) An enrollee has the ability to select or change the
2 enrollee's contribution level, subject to rules of the
3 department. If an enrollee fails to select a contribution
4 level, then the default contribution level shall be 3%, or
5 another percentage as the department may determine, of the
6 employee's wages up to the annual limits permitted by the
7 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
8 1 et seq.).

9 (4) An enrollee may select an investment option from the
10 investment options offered by the department. An enrollee may
11 change the investment option at any time, subject to rules of
12 the department. In the event that an enrollee fails to select
13 an investment option, the enrollee shall be placed in the
14 default investment option selected by the department.

15 (5) Following initial implementation of the program
16 under this section, at least once every year, participating
17 employers shall designate an open enrollment period of not
18 less than 15 days during which eligible employees who
19 previously opted out of the program may enroll in the program
20 or, if permitted by the participating employer, may enroll
21 prior to the open enrollment period.

22 (6) An employer shall retain the option at all times to
23 set an employer-sponsored retirement plan, such as a defined
24 benefit plan, 401(k) plan, Simplified Employee Pension (SEP)
25 plan or Savings Incentive Match Plan for Employees (SIMPLE)
26 plan, or to offer an automatic enrollment payroll deduction
27 IRA, instead of having a payroll deposit retirement savings
28 arrangement to allow employee participation in the program.
29 An employer-sponsored retirement plan must permit rollover of
30 an employee's program account into the plan.

1 (7) An employee may terminate participation in the
2 program at any time in a manner prescribed by the department.
3 Section 312. Payments.

4 Employee contributions deducted by a participating employer
5 through payroll deduction shall be paid by the participating
6 employer to the fund using one or more payroll deposit
7 retirement savings arrangements established by the department,
8 in cooperation and coordination with the Department of Revenue,
9 either:

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

13 (2) before a later deadline prescribed by the department
14 for making payments, but not later than the due date for the
15 deposit of tax required to be deducted and withheld relating
16 to collection of income tax at source on wages or for the
17 deposit of tax required to be paid under the unemployment
18 insurance system for the payroll period to which the payments
19 relate.

20 Section 313. Duty and liability of Commonwealth.

21 (a) Payments.--The Commonwealth shall have no duty or
22 liability to a party for the payment of retirement savings
23 benefits accrued by an individual under the program. Financial
24 liability for the payment of retirement savings benefits in
25 excess of funds available under the program shall be borne
26 solely by the entities that the department contracts with to
27 provide insurance to protect the value of the program.

28 (b) Liability.--No Commonwealth board, commission or agency,
29 or an officer, employee or member thereof, is liable for loss or
30 deficiency resulting from particular investments selected under

1 this act, except for a liability that arises out of a breach of
2 fiduciary duty under this act.

3 Section 314. Duty and liability of participating employers.

4 (a) Liability.--Participating employers shall not be liable
5 for an employee's decision to participate in or opt out of the
6 program, or for the investment decisions of the department or of
7 an enrollee.

8 (b) Fiduciary and other responsibility.--A participating
9 employer shall not:

10 (1) Be a fiduciary, or considered to be a fiduciary,
11 with respect to the program.

12 (2) Bear responsibility for the administration,
13 investment or investment performance of the program.

14 (3) Be liable with regard to investment returns, program
15 design and benefits paid to enrollees.

16 Section 315. Audit and reports.

17 (a) Reports to Governor and General Assembly.--The
18 department shall annually submit the following to the Governor
19 and the General Assembly:

20 (1) An audited financial report, prepared by the Auditor
21 General in accordance with generally accepted accounting
22 principles, of the program for each calendar year by July 1
23 of the next following year.

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

26 (i) A summary of the benefits provided by the
27 program, including the number of enrollees in the
28 program.

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

1 (iii) Other information that is relevant to make a
2 full, fair and effective disclosure of the operations of
3 the program and the fund.

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

7 (1) To participating employers, a report of the names of
8 each enrollee employed by the participating employer and the
9 amounts of contributions made by the participating employer
10 on behalf of each employee during the reporting period.

11 (2) To enrollees, a report of contributions and
12 investment income allocated, to withdrawals from and balances
13 in the enrollees' accounts for the reporting period.

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

17 CHAPTER 5

18 ENFORCEMENT

19 Section 501. Civil penalties.

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

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

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

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

6 (b) Fines for failure to remit.--An eligible employer shall
7 be subject to a fine of \$25 for each failure to timely remit a
8 payroll deduction contribution to the program of an enrollee.
9 Nothing within this subsection shall be construed or interpreted
10 as altering any rights or remedies at law or in equity of an
11 enrollee against the enrollee's employer for failing to timely
12 remit the enrollee's contributions to the program.

13 (c) Notice and assessment.--

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

22 (2) If, within 90 days after the date on which it was
23 issued, a protest of a notice of proposed assessment is filed
24 under subsection (d), the penalties specified in the notice
25 shall be deemed assessed upon the date when the decision of
26 the Department of Revenue with respect to the protest becomes
27 final.

28 (d) Protest and hearing.--A written protest against the
29 proposed assessment shall be filed with the Department of
30 Revenue in the form prescribed by the Department of Revenue,

1 setting forth the grounds on which the protest is based. If the
2 protest is filed within 90 days after the date the notice of
3 proposed assessment is issued, the Department of Revenue shall
4 reconsider the proposed assessment and shall grant the employer
5 a hearing. As soon as practicable after the reconsideration and
6 hearing, the Department of Revenue shall issue a notice of
7 decision to the employer, setting forth the Department of
8 Revenue's findings of fact and the basis of decision, which
9 decision shall be final.

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

25 (f) Mailing of notice.--Whenever notice is required under
26 this section, the notice may be issued by mailing it by first
27 class mail addressed to the person concerned at the last known
28 address of the person.

29 (g) Right of inspection.--All books and records and other
30 papers and documents relevant to the determination of a penalty

1 due under this section shall, during business hours, be subject
2 to inspection by the Department of Revenue or the Department of
3 Revenue's duly authorized agents and employees.

4 (h) Tax forms.--The Department of Revenue may require
5 employers to report information relevant to compliance with this
6 act on returns otherwise due from the employers under the act of
7 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
8 1971. Failure to provide the requested information on a return
9 shall cause the return to be deemed not accepted.

10 (i) Tax liability.--For purposes of a provision of law
11 allowing the Department of Revenue or another agency of this
12 Commonwealth to offset an amount owed to a taxpayer against a
13 tax liability of that taxpayer or allowing the Department of
14 Revenue to offset an overpayment of tax against a liability owed
15 to the Commonwealth, a penalty assessed under this section shall
16 be deemed to be a tax liability of the employer and a refund due
17 to an employer shall be deemed to be an overpayment of tax of
18 the employer.

19 (j) Confidential information.--Except as provided under this
20 subsection, all information received by the Department of
21 Revenue from returns filed by an employer or from an
22 investigation conducted under the provisions of this act shall
23 be confidential, except for official purposes within the
24 Department of Revenue or pursuant to official procedures for
25 collection of penalties assessed under this act. Nothing
26 contained under this subsection shall prevent the Department of
27 Revenue from publishing or making available to the public
28 reasonable statistics concerning the operation of this act
29 wherein the contents of returns are grouped into aggregates in
30 such a way that the specific information of an employer shall

1 not be disclosed. Nothing contained under this subsection shall
2 prevent the Department of Revenue or the department from
3 divulging information to an authorized representative of the
4 employer or to a person pursuant to a request or authorization
5 made by the employer or by an authorized representative of the
6 employer.

7 Section 502. Disposition of fines collected.

8 Civil penalties collected under this act shall be deposited
9 into the administrative fund and used by the department to cover
10 or defray expenses of the department or the Department of
11 Revenue incurs in the performance of its duties under this act.

12 CHAPTER 21

13 MISCELLANEOUS PROVISIONS

14 Section 2101. Regulations.

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

20 Section 2102. Federal considerations.

21 The department shall request in writing an opinion or ruling
22 from the appropriate entity with jurisdiction over the Employee
23 Retirement Income Security Act of 1974 (ERISA) (Public Law 93-
24 406, 88 Stat. 829) regarding the applicability of ERISA to the
25 program. The department may not implement the program if the IRA
26 arrangements offered under the program fail to qualify for the
27 favorable Federal income tax treatment ordinarily accorded to
28 IRAs under the Internal Revenue Code of 1986 (Public Law 99-514,
29 26 U.S.C. § 1 et seq.) or if it is determined that the program
30 is an employee benefit plan and State or employer liability is

1 established under ERISA.

2 Section 2103. Notice of program implementation.

3 (a) Publication in Pennsylvania Bulletin.--Upon the
4 implementation of the program in accordance with section 311,
5 the department shall publish notice in the Pennsylvania Bulletin
6 advising of the date of implementation of the program.

7 (b) Internet posting.--The department shall post notice of
8 the date of implementation of the program on the department's
9 publicly accessible Internet website. The notice shall include a
10 statement that in lieu of enrolling employees in the program
11 employers may sponsor an alternative arrangement, including, but
12 not limited to, a defined benefit plan, 401(k) plan, SEP plan,
13 SIMPLE plan or automatic payroll deduction IRA offered through a
14 private provider.

15 Section 2104. Effective date.

16 This act shall take effect as follows:

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

19 (2) The remainder of this act shall take effect
20 immediately.