

CHAPTER 163 (HB 180)

AN ACT relating to postsecondary education prepaid tuition and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

- (1) *"Academic year" means the time period specified by each participating institution;*
- (2) *"Board" means the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund;*
- (3) *"Fund" means the prepaid tuition payment fund created in Section 2 of this Act and known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund";*
- (4) *"Office" means the Tuition Account Program Office in the Office of the State Treasurer that is responsible for administering the prepaid tuition accounts;*
- (5) *"Participating institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, all of which are required to participate, and any Kentucky private college or university that is accredited by a national or regional accrediting agency, recognized by the United States Department of Education, that voluntarily requests to participate and is accepted for participation in the program by the board of directors created in Section 3 of this Act;*
- (6) *"Prepaid tuition" means the amount of tuition estimated by the board for the standard tuition plans and for each participating institution for the academic year specified in the prepaid tuition contract;*
- (7) *"Prepaid tuition academic year conversion" means the difference between the amount of prepaid tuition required in the original prepaid tuition contract and the amount of prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year;*
- (8) *"Prepaid tuition academic year conversion shortfall" means the amount by which the prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year exceeds the amount of prepaid tuition required in the original prepaid tuition contract;*
- (9) *"Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;*
- (10) *"Prepaid tuition contract" means the contract entered into by the board and the purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any participating institution as provided in Sections 1 to 7 of this Act;*
- (11) *"Prepaid tuition conversion" means the difference between the prepaid tuition of a standard plan and the prepaid tuition at a participating institution or the difference between the prepaid tuition at one participating institution and the prepaid tuition at another participating institution;*

- (12) *"Prepaid tuition conversion shortfall" means the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition of a standard plan or the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition at another participating institution;*
- (13) *"Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;*
- (14) *"Qualified beneficiary" means any resident of Kentucky at the time a purchaser enters into a prepaid tuition contract on behalf of the resident or any nonresident who intends to attend a participating institution in Kentucky;*
- (15) *"Standard tuition plan" means the average of the estimated tuition for the:*
 - (a) *Commonwealth's community colleges;*
 - (b) *Technical colleges;*
 - (c) *Four (4) year universities; or*
 - (d) *Private colleges or universities;*
- (16) *"Tuition" means the actual charges and all mandatory fees required as a condition of full-time enrollment in an undergraduate program for an academic year for a qualified beneficiary to attend a participating institution. Tuition for a private college or university is calculated on the current year tuition rate, increased by the same percentage that the University of Kentucky tuition is increased on a per year basis;*
- (17) *"Tuition credit" means the discounted net present value of a unit equal to one twentyfourth (1/24) of the prepaid tuition; and*
- (18) *"Tuition shortfall" means the amount by which tuition exceeds the prepaid tuition adjusted in proportion to the number of tuition credits purchased.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created an instrumentality of the Commonwealth to be known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund", to be governed by a board of directors and administered by the Tuition Account Program Office in the Office of the State Treasurer. The fund shall consist of payments received from prepaid tuition contracts under Sections 1 to 7 of this Act. Income earned from the investment of the fund shall remain in the fund and be credited to it. The fund shall not constitute an investment company as defined in KRS 291.010.*
- (2) *The purposes of the fund are:*
 - (a) *To provide affordable access to participating institutions for the qualified beneficiaries; and*
 - (b) *To provide students and their parents economic protection against rising tuition costs.*
- (3) *The office and the facilities of the State Treasurer shall be used and employed in the administration of the fund including, but not limited to, the keeping of records, the employment of staff to assist in the administration of the fund, the management of accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments. The office of the Treasurer and the board of the Kentucky Higher Education*

Assistance Authority, shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.

- (4) Assets of the fund shall constitute public funds of the Commonwealth and may be invested in any instrument, obligation, security, or property that constitutes legal investments for the investment of public funds in the Commonwealth that are deemed most appropriate by the board and may be pooled for investment purposes with any other investment of the Commonwealth that is eligible for asset pooling.*
- (5) The fund, through the State Treasurer, may receive and deposit into the fund gifts made by any individual or agency as deemed acceptable by the board.*
- (6) There is created a separate account within the State Treasurer's office to be known as the prepaid postsecondary tuition administrative account for the purposes of implementing and maintaining the Commonwealth postsecondary education prepaid tuition trust fund. Funds may be transferred from the property abandoned under KRS Chapter 393 to the administrative account and shall be repaid to the abandoned property fund no later than three (3) years after the transfer. The board may establish administrative fees for handling prepaid tuition contracts and deposit the money in this account.*
- (7) Four (4) years after the effective date of this Act, the administration of the fund shall be transferred from the Office of the State Treasurer to the Kentucky Higher Education Assistance Authority unless the General Assembly shall decide that the administration of the fund shall remain in the Office of the State Treasurer.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) The fund shall be governed by an eleven (11) member board of directors. The board shall have five (5) ex officio voting members including the State Treasurer, the president of the Council on Postsecondary Education or designee, the secretary of the Finance Cabinet or designee, the secretary of the Revenue Cabinet or designee, the chair of the Association of Kentucky Independent Colleges and Universities or designee, three (3) members appointed by the State Treasurer, and three (3) members appointed by the Governor. The executive director of the Higher Education Assistance Authority or designee shall serve as a nonvoting member. The gubernatorial and State Treasurer appointees shall have experience in finance, accounting, or investment management.*
- (2) Of the members to be appointed initially by the State Treasurer, one (1) shall be appointed for a three (3) year term, and two (2) shall be appointed for a four (4) year term; of the members to be appointed by the Governor, two (2) shall be appointed for a two (2) year term and one (1) for a three (3) year term. Thereafter, all appointments shall be for terms of four (4) years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be appointed to serve for more than two (2) successive four (4) year terms. No person holding a full-time office or position of employment with the state, any county or city, or any educational institution shall be eligible for gubernatorial appointment to the board.*
- (3) Members of the board shall receive no compensation but shall be reimbursed expenses incurred in the performance of their duties at the same per diem and travel rate as is paid the employees of the state.*

- (4) *The State Treasurer shall be the chair and presiding officer of the board. The State Treasurer may appoint other officers as the board may deem advisable or necessary. A majority of the members of the board shall constitute a quorum for the transaction of the business of the fund.*
- (5) *The initial board appointments shall be made by October 1, 2000.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

The board shall:

- (1) *Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of Sections 1 to 7 of this Act;*
- (2) *Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;*
- (3) *Invest moneys in the fund in any instruments, obligations, securities, or property as permitted by law and deemed appropriate by the board;*
- (4) *Procure insurance to protect against any loss in connection with the fund's property, assets, or activities and to indemnify board members from personal loss or accountability from liability arising from any action or inaction as a board member;*
- (5) *Make arrangements with participating institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts, including, but not limited to, payment from the fund of the tuition cost on behalf of a qualified beneficiary to attend a participating institution in which the beneficiary is admitted and enrolled;*
- (6) *Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including but not limited to, the termination, withdrawal, or transfer of payments under a prepaid tuition contract; tuition shortfalls; number of participants; time limitations for prepaid tuition contracts and the use of tuition benefits; tuition conversions; payment schedules; payroll deductions; penalties for failure of purchasers to adhere to contracts; and transfer of prepaid tuition credits towards private education in the Commonwealth or for out-of-state institutions;*
- (7) *Obtain appropriate actuarial assistance to establish, maintain, and certify a fund sufficient to defray the obligation of the fund, annually evaluate or cause to be evaluated, the actuarial soundness of the fund, and determine prior to each academic year the amount of prepaid tuition for each standard tuition plan and for each participating institution for specific academic years, the corresponding required amount of tuition credits, the amount of prepaid tuition conversion, and the amount of prepaid tuition academic year conversion;*
- (8) *Make an annual report each year to the Legislative Research Commission showing the fund's condition; and*
- (9) *Market and promote participation in the fund.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *The prepaid tuition contract entered into by the purchaser and the board shall constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a qualified beneficiary upon acceptance and enrollment at a participating institution in proportion to*

the number of tuition credits purchased. The fund shall pay this amount to the participating institution on behalf of the qualified beneficiary.

- (2) *The fund shall pay the amount of any tuition shortfall to the participating institution on behalf of the qualified beneficiary.*
- (3) *The purchaser or qualified beneficiary shall pay to the participating institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.*
- (4) *A qualified beneficiary attending a participating institution may apply tuition credits to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.*
- (5) *The board and participating institutions may agree that tuition credits remaining in a prepaid tuition account after tuition is paid may be converted into other educational expense credits under administrative regulations promulgated by the board in compliance with Section 529 of the Internal Revenue Code. The board may permit the use of tuition credits for part-time undergraduate enrollment or graduate programs at participating institutions, after an appropriate conversion. Any prepaid tuition remaining in a prepaid tuition account, for reasons other than termination of the account as provided for in Section 7 of this Act, shall be refunded to the purchaser or the purchaser's designee.*
- (6) *The value of the prepaid tuition credits shall not be used in calculating personal asset contribution for determining eligibility and need for student loan programs, student grant programs or other student aid programs administered by any agency of the Commonwealth, except as otherwise may be provided by federal law.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *Purchasers buying tuition credits for a qualified beneficiary shall enter into prepaid tuition contracts with the board. These contracts shall be in a form as shall be determined by the office. The contract shall provide for the purchase of tuition credits for prepaid tuition for the qualified beneficiary from one (1) to four (4) specific academic years.*
- (2) *Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:*
 - (a) *The qualified beneficiary;*
 - (b) *The academic year or years for which tuition credits are purchased;*
 - (c) *A standard plan designation to a participating institution designation;*
 - (d) *A standard plan designation to another standard plan designation; or*
 - (e) *One (1) participating institution designation to another participating institution designation. The value of the tuition credit shall be adjusted under requirements of administrative regulations promulgated by the board.*
- (3) *A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary and shall be exempt from all state and local taxes including, but not limited to, the intangible personal property tax levied under KRS 132.020, the individual income tax levied under KRS 141.020 and the inheritance tax levied under KRS Chapter 140.*

- (4) *Nothing in Sections 1 to 7 of this Act or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to a participating institution, be allowed to continue to attend a participating institution after having been admitted, or be graduated from a participating institution.*
- (5) *Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract payments may be made in lump sum installments.*
- (6) *The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract. In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.*
- (7) *The prepaid tuition contract shall provide that the purchaser and the qualified beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account. Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary. No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.*
- (8) *A prepaid tuition contract does not constitute a security as defined in KRS 292.310 or an annuity as defined in KRS 304.5-030.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 164A IS CREATED TO READ AS FOLLOWS:

- (1) *Upon termination of a prepaid tuition contract, the office shall pay from the fund to the purchaser or the purchaser's designee:*
 - (a) *The value of the tuition credits if the contract is terminated for any of the following:*
 1. *The death of the qualified beneficiary;*
 2. *The disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the beneficiary at a participating institution impossible or unreasonably burdensome;*
 - (b) *The purchase price of the tuition credits if the contract is terminated for any of the following:*
 1. *Failure of the qualified beneficiary who, in the opinion of the office, has made a good faith attempt to gain admission to a participating or nonparticipating institution within the time limits imposed by the board; or*
 2. *The movement of a family of a qualified beneficiary from Kentucky to another state with a savings plan.*
- (2) *Upon termination of a prepaid tuition account as a result of a decision by the qualified beneficiary to attend a nonparticipating institution, the office at the direction of the beneficiary and upon presentation of proof of the beneficiary's acceptance by and enrollment in the nonparticipating institution, shall pay from the fund to the institution the value of the tuition credits as determined by the board of directors for the postsecondary education prepaid tuition program. If the cost of tuition exceeds the value of the tuition credits, it shall be the responsibility of the beneficiary to pay the difference. If the value of*

the tuition credits exceeds the cost of tuition, the beneficiary shall be given a refund equal to the difference.

- (3) *At the option of the purchaser or the purchaser's designee, the purchase price of any unused tuition credits may be carried forward to another academic year or refunded by the office from the fund.*
- (4) *Upon termination of a tuition account as a result of a decision by the qualified beneficiary not to attend a participating or nonparticipating institution, within time limits determined by the board, the purchaser or purchaser's designee shall receive the purchase price of the tuition credits.*
- (5) *The office may impose a fee upon termination of the account for administrative costs and deduct the fee from the amount otherwise payable under this section.*
- (6) *If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser or the purchaser's designee shall receive a refund from the fund by the office consisting of the amount of the prepaid tuition for the number of tuition credits purchased for that academic year.*
- (7) *If the purchaser wishes to transfer funds from the prepaid tuition account to the Kentucky Higher Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund and the board of the Kentucky Higher Education Assistance Authority.*

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

The Tuition Account Program Office is hereby established within the Office of the State Treasurer for the purpose of implementing and administering the prepaid tuition account program established in Sections 1 to 7 of this Act. The program shall provide for the purchase of tuition credits for a beneficiary to attend a participating postsecondary institution.

SECTION 9. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:

Seventy-five percent (75%) of the balance of the abandoned property funds shall be available for support of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. Transfers from the abandoned property fund to the trust fund are authorized in order to meet any unfunded liability as determined by the board.

Section 10. KRS 164A.350 is amended to read as follows:

For all purposes of Kentucky law, the following shall be applicable:

- (1) The participant shall retain ownership of all contributions made under any participation agreement up to the date of utilization for payment of higher education costs for the beneficiary, and all interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;
- (2) Any participant may cancel a participation agreement. In the event the participation agreement is terminated, the participant shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and a reversionary right to receive interest on all the contributions at the rate of

interest at which the contributions were invested, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection ~~(8)~~~~(7)~~ of this section;

- (3) ***Any participant may cancel a participation agreement and shall be permitted to transfer funds to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund established in Section 2 of this Act, and in compliance with administrative regulations promulgated by the board for the savings plan trust.***
- (4) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (7) of this section;
- ~~(5)~~~~(4)~~ The institution of higher education shall obtain ownership of the contributions made for the higher education costs paid to the institution at the time each payment is made to the institution;
- ~~(6)~~~~(5)~~ Any amounts which may be paid pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section, shall be owned by the trust;
- ~~(7)~~~~(6)~~ A participant may transfer ownership rights to another eligible participant, including, but not limited to, a gift of the ownership rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;
- ~~(8)~~~~(7)~~ Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board shall charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:
 - (a) The death, permanent disability, or mental incapacity of the beneficiary; or
 - (b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and
- ~~(9)~~~~(8)~~ Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

Section 11. KRS 164.746 is amended to read as follows:

- (1) The authority shall be governed, all of its powers shall be exercised, and its duties and functions shall be performed by a board of directors. The board shall consist of seven (7)

voting members who shall be appointed by the Governor. In addition, the president of the Council on Postsecondary Education, *the State Treasurer*, and the secretary of the Department of Finance shall serve as nonvoting ex-officio members. The term of office of appointed members shall be four (4) years. Each member shall serve for the term for which he is appointed and until his successor is appointed.

- (2) Appointments to fill vacancies on the board shall be made in the same manner as regular appointments. The person appointed shall hold the position for the unexpired portion of the term only.
- (3) The board shall elect from its voting membership a chairman and chairman-elect who shall each serve for a term of one (1) year. At the conclusion of the chairman's term of office, the chairman-elect shall become chairman for the succeeding year and the board shall elect from its voting membership a new chairman-elect.
- (4) Board members shall receive compensation for their services, in the amount of sixty-five dollars (\$65) per day, and may be reimbursed for actual and necessary expenses incurred in the performance of their duties under KRS 164.740 to 164.785.
- (5) The board shall provide for the holding of regular meetings and special meetings.
 - (a) A majority of the voting members shall constitute a quorum for the transaction of any business, special meetings shall be called by the chairman in accordance with KRS 61.823, and either the chairman or the chairman-elect shall be present for the transaction of any business.
 - (b) In lieu of personal attendance by members of the board of directors at the same location, the board of directors may conduct meetings by teleconference or other available technological means suitable for conducting its business. Meetings of the board shall be open and accessible to the public in accordance with KRS 61.805 to 61.850, and any alternate method of conducting a meeting in lieu of personal attendance shall ensure public access.
- (6) The board shall adopt bylaws and policies governing its internal affairs and the conduct of its business, and shall adopt administrative regulations pursuant to KRS Chapter 13A, not inconsistent with law, in connection with the administration of the authority's programs and the performance of its functions and duties.
- (7) The board may:
 - (a) Appoint such officers and employees as necessary and may fix their compensation, and shall prescribe their duties notwithstanding personnel limits established by KRS 18A.010 or the biennial budget and its related documents; and
 - (b) Adopt the provisions of KRS 45A.345 to 45A.460, pursuant to KRS 45A.343.
- (8) ***The Office of the Treasurer and the board of the Kentucky Higher Education Assistance Authority shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.***

Section 12. Initial purchase of prepaid tuition credits through the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund shall commence no sooner than the academic year 2001-2002.

Section 13. During the 2000-2002 biennium, the prepaid postsecondary tuition administrative account is authorized to borrow a maximum of \$1,000,000 from the abandoned property account.

Approved March 28, 2000