

CHAPTER 382**(HB 462)**

AN ACT relating to education finance.

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

Section 1. KRS 164A.300 is amended to read as follows:

- (1) The General Assembly of the Commonwealth of Kentucky hereby declares as a legislative finding of fact that the general welfare and well-being of the Commonwealth are directly related to the educational levels and skills of the citizens of the Commonwealth. Therefore, a vital and valid public purpose of the Commonwealth is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the Commonwealth.
- (2) The General Assembly finds, declares, and recognizes that the Commonwealth has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in Kentucky and the general welfare of the citizens and the Commonwealth will be enhanced by creation of a program pursuant to which citizens and others may invest money in a public trust for future application to the payment of higher education costs in the Commonwealth and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for such future higher education application represents the carrying out of a valid and vital public purpose of the Commonwealth. In order to make available to the citizens of the Commonwealth an opportunity to fund future higher education needs for beneficiaries~~[with certain public assistance]~~, it is necessary that a public trust be established in which the citizens of the Commonwealth and others may invest moneys for future educational use.~~[It is further necessary to establish and create an endowment trust, which may be funded with public funds, among other sources, the income from which will be made available to participants in the savings plan trust to enhance their savings invested for future higher education costs.]~~
- (3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create the Kentucky Educational Savings Plan Trust~~[with a separate endowment trust to enhance the investment return of the savings plan trust]~~. The implementation and effectuation of the Kentucky Educational Savings Plan Trust as provided by KRS ~~164A.300~~~~[164A.310]~~ to 164A.380 constitutes the carrying out of a valid and vital public purpose for which public funds of the Commonwealth may be expended.
- (4) It is in the best interest of the people of the Commonwealth to establish and provide for the operation of the Kentucky Educational Savings Plan Trust in a manner conforming to federal law that allows participants and beneficiaries federal income taxation benefits on contributions and earnings on contributions expended by the trust for the higher education costs of a beneficiary.

Section 2. KRS 164A.305 is amended to read as follows:

As used in KRS 164A.300 to 164A.380, except where the context clearly requires another interpretation:

- (1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;

- (2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;
- (3) "Beneficiary" means:
- (a) Any person designated at the commencement of participation by a participation agreement to benefit from payments for higher education costs at an institution of higher education;
 - (b) The new beneficiary, in the case of a change of beneficiaries pursuant to KRS 164A.330~~(4)~~~~(7)~~; or
 - (c) The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code;
- (4) "Benefits" means the payment of higher education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an institution of higher education;
- (5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;
- ~~(6) "Endowment trust" means the endowment fund established pursuant to KRS 164A.337 which shall be administered as a separate trust;~~
- ~~(7) "Higher education costs" means the costs specified in section 529(e)(3) of the Internal Revenue Code of 1986 as amended for attendance at an institution of higher education as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965, 20 U.S.C. sec. 1087ll, as amended;~~
- ~~(7)~~~~(8) "Institution of higher education" means an institution as defined in Section 529(e)(5) of the Internal Revenue Code of 1986, as amended;~~
- ~~(8)~~~~(9) "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;~~
- ~~(9)~~~~(10) "Participant" means an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code, an individual, firm, corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of higher education costs on behalf of a beneficiary;~~
- ~~(10)~~~~(11) "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;~~
- ~~(11)~~~~(12) "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;~~
- ~~(12)~~~~(13) "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;~~
- ~~(13)~~~~(14) "Tuition" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment;~~

~~(14)~~~~(15)~~ "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

Section 3. KRS 164A.310 is amended to read as follows:

There is hereby created an instrumentality of the Commonwealth to be known as the Kentucky Educational Savings Plan Trust. The board, in the capacity of trustee, shall have the power and authority to:

- (1) Sue and be sued;
- (2) Make and enter into contracts necessary for the administration of the savings plan trust pursuant to KRS 164A.300 to 164A.380;
- (3) Adopt a corporate seal and to change and amend it from time to time;
- (4) Invest moneys within the program fund in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the savings plan trust;
- (5) Enter into agreements with any institution of higher education, the Commonwealth of Kentucky, or any federal or other state agency or other entity as required for the effectuation of its rights and duties pursuant to KRS 164A.300 to 164A.380;
- (6) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund, which, in the case of any contributions from other than general funds of the Commonwealth, may be limited in application to definite classes of beneficiaries;
- (7) Enter into participation agreements with participants;
- (8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;
- (9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in KRS 164A.300 to 164A.380;
- (10) Appoint a program administrator and to determine the duties of the program administrator and other staff as necessary and fix their compensation within the provisions of KRS Chapter 18A;
- (11) ***Delegate to the program administrator general supervision and direction over the administrative function of the trust and its employees in carrying out the policies, programs, administrative regulations, and directives of the board;***
- (12) Make provision for the payment of costs of administration and operation of the savings plan trust;
- ~~(13)~~~~(12)~~ Carry out the duties and obligations of the savings plan trust pursuant to KRS 164A.300 to 164A.380 and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the savings plan trust and KRS 164A.300 to 164A.380; and

~~(14)~~~~(13)~~ Promulgate administrative regulations to implement the provisions of KRS 164A.300 to 164A.380 consistent with the federal Internal Revenue Code and administrative regulations issued pursuant to that code.

Section 4. KRS 164A.325 is amended to read as follows:

In addition to effectuating and carrying out all of the powers granted by KRS 164A.300 to 164A.380, the board, *as trustee*, shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of KRS 164A.300 to 164A.380 pertaining to the savings plan trust, including, but not limited to, the power to:

- (1) Engage investment advisors to assist in the investment of savings plan trust assets;
- (2) Carry out studies and projections in order to advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;
- (3) Contract, *in accordance with the provisions of KRS 45A.345 to 45A.460 under KRS 45A.343*, for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;
- (4) Participate in any other way in any federal, state, or local governmental program for the benefit of the savings plan trust;
- (5) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the savings plan trust, and provide for reasonable service charges, including penalties for cancellations and late payments in respect of participation agreements;
- (6) Procure insurance against any loss in connection with the property, assets or activities of the savings plan trust;
- (7) Administer the funds of the savings plan trust;
- (8) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and
- (9) Promulgate reasonable rules and regulations for the administration of the savings plan trust.

Section 5. KRS 164A.330 is amended to read as follows:

The savings plan trust shall have the authority to enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

- (1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans and may contain penalties for failure to make contributions when scheduled;
- (2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum contribution participation agreement in connection with which a single, lump-sum contribution is made by the participant for the benefit of a beneficiary;

- (3) ~~{The participation agreement shall specify the minimum rate of interest which shall be borne by the investment made by the participant;~~
- (4) ~~Beneficiaries designated in participation agreements may be designated from date of birth through age fourteen (14);~~
- (5) ~~Payment of benefits provided under participation agreements must begin not later than the first full academic semester at an institution of higher education following the eighteenth birthday of the subject beneficiary unless the participant notifies the program administrator to delay payment of benefits for a designated period of time. At the end of that designated period of time, the payment of benefits shall begin unless the participant again notifies the program administrator to delay payment of benefits;~~
- (6) ~~The~~ Execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will:
 - (a) Be admitted to an institution of higher education;
 - (b) If admitted, be determined a resident for tuition purposes by the institution of higher education, unless the participation agreement is vested;
 - (c) Be allowed to continue attendance at the institution of higher education following admission; or
 - (d) Graduate from the institution of higher education;
- ~~(4){(7)}~~ Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant ~~{ prior to the date of admission of any beneficiary under a participation agreement by an institution of higher education }~~ provided, however, that the substitute beneficiary shall be eligible;
- ~~(5){(8)}~~ Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;
- ~~(6){(9)}~~ Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky ~~{ prior to enrollment in any other educational institution }~~;
- ~~(7){(10)}~~ Each participation agreement shall provide that it may be canceled under the terms and conditions, including payment of the fees and costs, set forth in the rules and regulations promulgated by the board;
- ~~(8){(11)}~~ The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated higher education costs of the beneficiary;
- ~~(9){(12)}~~ ——— The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;
- ~~(10){(13)}~~ Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter ~~{ are confidential and }~~ shall not

be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:

- (a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;
- (b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;
- (c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and
- (d) Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

Section 6. KRS 164A.335 is amended to read as follows:

The board, *as trustee*, shall segregate moneys received by the savings plan trust into two (2) funds, which shall be identified as the program fund and the administrative fund. Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by KRS 164A.300 to 164A.380. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070. All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Contributions shall be accounted for separately for each beneficiary. Deposits and interest thereon accumulated on behalf of participants in the program fund of the savings plan trust may be used for payments to any institution of higher education. ~~However, no rights to any moneys derived from the endowment trust shall exist if moneys payable under the participation agreement are paid to an education institution which is not an institution of higher education in Kentucky, as defined by KRS 164A.300 to 164A.380.~~

Section 7. KRS 164A.350 is amended to read as follows:

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

- (1) The ~~trust~~~~participant~~ shall ~~exercise~~~~retain~~ ownership of all contributions made under any participation agreement *and all interest derived from the investment of the contributions made by the participant* up to the date of utilization for payment of higher education costs for the beneficiary. ~~and~~ All *contributions made under any participant agreement and* 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 *at any time, and terminate the trust's ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee*. In the event the participation agreement is terminated *in part*, the ~~trust~~~~participant~~ shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and *not returned to the participant. The participant*

shall retain a reversionary right to receive *upon termination the actual market value of the participant's account at the time of the cancellation, including* 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 (7) of this section;

- (3) 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;
- (4) The institution of higher education shall obtain ownership of the *distributions made from the participant's account* ~~contributions made~~ for the higher education costs paid to the institution at the time each payment is made to the institution;
- (5) Any amounts *received by the trust* ~~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;
- (6) A participant may transfer *the participant's* ~~ownership~~ rights to another eligible participant, including, but not limited to, a gift of the *participant's* ~~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;
- (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
- (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 8. KRS 164A.360 is amended to read as follows:

The board, as trustee, may establish, by the promulgation of administrative regulations in accordance with KRS Chapter 13A, a program of lending from any funds available to the trust, for participants and beneficiaries to ~~In connection with any participation agreement as to which benefits for payment of higher education costs have accrued and are being paid or are eligible to be paid, the participant thereof may~~ borrow from the trust ~~, but only~~ for the *sole* purpose of paying

higher education costs to an institution of higher education. The interest rate payable by ~~borrowers~~~~[participants]~~ for any such borrowing shall be a rate~~[as]~~ established by the board from time to time. Any contribution to such loan program from *the program fund*~~[trust funds]~~ or any loan made *from the program fund*~~[with trust funds]~~ shall be insured.

Section 9. KRS 164A.370 is amended to read as follows:

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky or any of its political subdivisions. *Investment income*~~[Interest]~~ earned on *contributions*~~[moneys]~~ paid by any participant *and used for higher education costs defined in KRS 164A.305(7) or refunded under KRS 164A.350(7)(a) or 164A.350(7)(b)* shall not be subject to Kentucky income tax by either a participant or any beneficiary of a participation agreement, the purposes for which the *investment income*~~[interest]~~ was accrued being deemed and declared to be entirely public in nature. *Earnings that are not used for higher education costs as defined in KRS 164A.305(7) and are refunded shall be subject to Kentucky income tax, except for earnings refunded pursuant to KRS 164A.350(7)(a) and 164A.350(7)(b).*

Section 10. KRS 164A.375 is amended to read as follows:

The assets of the trust, including the program fund~~[and the endowment fund]~~, shall at all times be preserved, invested and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

Section 11. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

- (1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;
- (2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;
- (3) "ACT score" means the composite score achieved on the American College Test or an equivalent score, as determined by the council, on the Scholastic Assessment Test;
- (4) "Authority" means the Kentucky Higher Education Assistance Authority;
- (5) "Award period" means two (2) consecutive academic terms;
- (6) "Commonwealth merit scholarship" means a scholarship provided to an eligible student to attend a participating institution;
- (7) "Commonwealth merit scholarship curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;
- (8) "Commonwealth merit scholarship trust fund" means the Wallace G. Wilkinson Commonwealth merit scholarship trust fund;
- (9) "Council" means the Council on Postsecondary Education created under KRS 164.011;
- (10) "Eligible student" means any person who is a Kentucky resident enrolling in a Kentucky high school, after July 1, 1998, who, while meeting the Commonwealth merit scholarship curriculum requirements, has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, and who is not a convicted felon;

- (11) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;
- (12) "Grade point average" means the grade point average earned by an eligible student based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;
- (13) "High school" means any Kentucky public high school, and any private, parochial, or church school that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;
- (14) "Maximum award amount" means the sum of the proportionate base scholarship amount earned by an eligible student in each academic year of high school study and any supplemental award earned by an eligible student. The amount so determined shall be the maximum amount available to the eligible student for any award period;
- (15) "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:
- (a) 1. Is publicly operated; or
 2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; ~~or~~ ~~and~~
 3. ***Is designated by the Council on Postsecondary Education as an approved out-of-state institution that offers a degree program in a field of study that is not offered at any institution in the Commonwealth; and***
- (b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;
- (16) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and
- (17) "Supplemental award" means commitment of additional scholarship funds under KRS 164.7879(3) to an eligible student based on the eligible student's ACT score.

SECTION 12. A NEW SECTION OF KRS CHAPTER 164.7871 TO 164.7889 IS CREATED TO READ AS FOLLOWS:

An eligible student who has earned a Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award and who is enrolled in an out-of-state institution shall be eligible to receive the Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award if he or she is enrolled in a degree program in a field of study that is not available at any participating institution in the Commonwealth. The Council on Postsecondary Education shall promulgate administrative regulations to establish procedures to designate an out-of-state

institution as an approved participating institution as defined in KRS 164.7874 and to notify the Kentucky Higher Education Assistance Authority of its approval to transfer to the out-ofstate institution the amount of the scholarship and supplemental award earned by the eligible student.

Section 13. Moneys held by the Kentucky Educational Savings Plan Trust on June 30, 2000, as an endowment for purposes of distributing investment earnings to beneficiaries enrolled in an institution of higher education in Kentucky may, at the discretion of the board of directors of the Kentucky Higher Education Assistance Authority in its capacity of trustee, be distributed as follows:

- (1) The investment earnings on the endowment fund accrued as of June 30, 2000, shall be allocated and proportionally added to each participant's account in the program fund; and
- (2) The remainder of the moneys held in the endowment fund on June 30, 2000, including, but not limited to, any contributions to the endowment, may be distributed in any amount and combination of the following dispositions:
 - (a) Proportionally added to each participant's account in the program fund; or (b) Transferred to the administrative fund.

Approved April 7, 2000