

**CHAPTER 25****(HB 386)**

AN ACT relating to Kentucky's postsecondary education prepaid tuition program.

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

Section 1. KRS 164A.700 is amended to read as follows:

As used in KRS 164A.700 to 164A.709, unless the context requires otherwise:

- (1) "Academic year" means the time period specified by each *eligible educational*~~participating~~ institution;
- (2) "Board" means the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund;
- (3) *"Eligible educational institution" means an institution defined in the Internal Revenue Code of 1986, as amended, 26 U.S.C. sec. 529;*
- (4) "Fund" means the prepaid tuition payment fund created in KRS 164A.701 and known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund" *which shall be marketed under the name "Kentucky's Affordable Prepaid Tuition"*;
- ~~(5)(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 KRS 164A.703;~~
- (6) "Prepaid tuition" means the amount of tuition estimated by the board for the ~~standard~~ *tuition plan under*~~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 *eligible educational*~~participating~~ institution as provided in KRS 164A.700 to 164A.709;

- (11) "Prepaid tuition conversion" means the difference between the *value of a* prepaid tuition *account*~~[of a standard plan]~~ and the~~[prepaid]~~ tuition at *an eligible educational*~~[a participating]~~ institution~~[or the difference between the prepaid tuition at one (1) participating institution and the prepaid tuition at another participating institution];~~
- (12) "Prepaid tuition conversion shortfall" means the amount by which the *actual*~~[prepaid]~~ tuition *cost* at *an eligible educational*~~[a participating]~~ institution exceeds the amount of the *value of a* prepaid tuition *account*~~[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:
- (a) Any *Kentucky* resident *designated as beneficiary*~~[of Kentucky]~~ at the time a purchaser enters into a prepaid tuition contract;~~[on behalf of the resident]~~ or
  - (b) Any nonresident *designated at the time a purchaser enters into a prepaid tuition contract* who intends to attend *an eligible*~~[a participating]~~ institution in Kentucky; or
  - (c) *The new beneficiary, in the case of a change of beneficiaries under provisions of Section 6 of this Act; or*
  - (d) *The individual receiving a scholarship in the case of a prepaid tuition contract purchased by a state or local government or agency or instrumentality thereof or an organization described in 26 U.S.C. sec. 501(c)(3), and exempt from federal income taxation pursuant to 26 U.S.C. sec. 501(a) as part of a scholarship program offered by the government entity or the organization;*
- (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 *an eligible educational*~~[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];~~~~
- (16)~~(17)~~ "*Qualified postsecondary education expenses*"~~["Tuition credit"]~~ means the *expenses as defined in 26 U.S.C. sec. 529*~~[discounted net present value of a unit equal to one twenty-fourth (1/24) of the prepaid tuition];~~[and]~~~~
- (17)~~(18)~~ "Tuition *plan*~~[shortfall]" means *a*~~[the amount by which]~~ tuition *plan approved by the board and provided under a*~~[exceeds the]~~ prepaid tuition *contract; and*~~
- (18) "*Value of a prepaid tuition account*" means the amount which the fund is obligated to pay for tuition for an academic period based on full payment of the purchaser's tuition plan; except, under a tuition plan for private colleges and universities, tuition shall be

*calculated based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment*~~{adjusted in proportion to the number of tuition credits purchased}~~.

Section 2. KRS 164A.701 is amended 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 KRS 164A.700 to 164A.709. 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 July 14, 2000, 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. KRS 164A.703 is amended 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 **Independent** 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. KRS 164A.704 is amended to read as follows:

The board shall:

- (1) Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of KRS 164A.700 to 164A.709;
- (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 **eligible educational**~~[-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 **eligible educational**~~[-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 **eligible educational** ~~participating~~ institution for specific academic years, the corresponding **value** ~~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; *and*
- (10) *Develop, sponsor, and maintain a scholarship program, if deemed feasible by the board, to provide the benefits of the fund to financially disadvantaged families and students of Kentucky under criteria established by the board to encourage students to obtain postsecondary education in Kentucky and otherwise consistent with the purposes of the fund.*

Section 5. KRS 164A.705 is amended 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 **an eligible educational** ~~a participating~~ institution in **accordance with** ~~proportion to~~ the ~~number of~~ tuition **plan** ~~credits~~ purchased. ~~The fund shall pay this amount to the participating institution on behalf of the qualified beneficiary.~~
- (2) *Under a* ~~The fund shall pay the amount of any~~ tuition **plan for private colleges and universities, tuition shall be paid based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment** ~~shortfall to the participating institution on behalf of the qualified beneficiary~~.
- (3) The purchaser or qualified beneficiary shall pay to the **eligible educational** ~~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 **an eligible educational** ~~a participating~~ institution may apply **the value of a prepaid tuition account** ~~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 **value of a prepaid** ~~board and participating institutions may agree that~~ tuition **account** ~~credits~~ remaining ~~in a prepaid tuition account~~ after tuition is paid may be **used for** ~~converted into~~ other **qualified** educational **expenses** ~~expense credits~~ under administrative regulations promulgated by the board in compliance with **26 U.S.C. sec.** ~~Section~~ 529 ~~of the Internal Revenue Code~~. The board may permit the use of **the value of a prepaid** tuition **account** ~~credits~~ for part-time undergraduate enrollment or graduate programs at **eligible educational** ~~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 KRS 164A.707, shall be refunded to the purchaser or the purchaser's designee].

- (6) *In the event a qualified beneficiary attends an eligible educational institution for which payment of tuition is not guaranteed by the fund in whole or in part, and if the cost of tuition exceeds the value of a prepaid tuition account, the fund shall have no responsibility to pay the difference. If the value of a prepaid tuition account exceeds the cost of tuition, the excess may be used for other qualified postsecondary education expenses as directed by the purchaser.*
- (7) The value of ~~a~~the prepaid tuition ~~account~~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. KRS 164A.707 is amended to read as follows:

- (1) Purchasers buying *prepaid* 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 *a* tuition ~~plan~~credits for prepaid tuition for the qualified beneficiary from one (1) to *five* (5)~~four~~ (4) specific academic years.
- (2) Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:
- The qualified beneficiary, *in accordance with 26 U.S.C. sec. 529*;
  - The academic year or years for which *prepaid* tuition ~~is~~credits~~are~~ purchased;
  - ~~A standard plan designation to a participating institution designation;~~
  - ~~A~~ *tuition*~~[standard]~~ plan designation to another *tuition*~~[standard]~~ plan designation; ~~or~~
  - ~~(d)~~~~(e)~~ *The number of years for which prepaid tuition is purchased; or*
  - Other provisions of the prepaid tuition contract as permitted*~~[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. *Prepaid tuition accounts*~~—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. *Payments from a prepaid tuition account used to pay qualified postsecondary education expenses, or disbursed due to the death or disability of the beneficiary, or receipt of a scholarship by the beneficiary shall be exempt from tax liabilities.*
- (4) Nothing in KRS 164A.700 to 164A.709 or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to *an eligible educational*~~[a participating]~~ institution, be allowed to continue to attend *an eligible educational*~~[a participating]~~ institution after having been admitted, or be graduated from *an eligible educational*~~[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, *except for a prepaid tuition contract purchased in accordance with subsection (14)(d) of Section 1 of this Act*. 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.
- (9) *Each prepaid tuition contract is subject to, and shall incorporate by reference, all operating procedures and policies adopted by the board, the statutes governing prepaid tuition contracts in KRS 164A.700 to 164A.709 and KRS 393.015, and administrative regulations promulgated thereunder. Any amendments to statutes, administrative regulations, and operating procedures and policies shall automatically amend prepaid tuition contracts, with retroactive or prospective effect, as applicable.*

Section 7. KRS 164A.709 is amended to read as follows:

- (1) *A purchaser may terminate a prepaid tuition contract at any time upon written request to the office.*
- (2) Upon termination of a prepaid tuition contract *at the request of a purchaser*, the office shall pay from the fund to the purchaser ~~or the purchaser's designee~~:
  - (a) The value of the *prepaid* tuition *account* ~~credits~~ if the contract is terminated for ~~any of the following~~:
    1. The death of the qualified beneficiary; *or*
    2. The disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the beneficiary at *an eligible educational* ~~a participating~~ institution impossible or unreasonably burdensome; *or*
    3. *A request made on or after July 1 of the initial projected year of enrollment of the qualified beneficiary; and*
  - (b) The *amounts paid on the purchaser's prepaid* ~~purchase price of the~~ tuition *contract* ~~credits~~ if the contract is terminated *and a request for refund is made before July 1 of the qualified beneficiary's initial projected year of enrollment. The board may determine a rate of interest to accrue for payment on the amount otherwise payable under this paragraph* ~~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 *value of the prepaid*~~[purchaser's designee, the purchase price of any unused]~~ tuition *account*~~[credits]~~ may be carried forward to another academic year or *distributed*~~[refunded]~~ by the~~[office from the]~~ fund *upon the purchaser's request*.
- (4) *All refunds paid shall be net of administrative fees as determined by the board.* ~~[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.
- ~~(5) [(6)]~~ If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser *may request*~~[or the purchaser's designee shall receive]~~ a refund~~[from the fund by the office]~~ consisting of the amount of the *value of the prepaid tuition account, not to exceed the amount of the scholarship*~~[for the number of tuition credits purchased for that academic year]~~.
- ~~(6) [(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.
- (7) *If the purchaser wishes to transfer funds from the prepaid tuition account to another qualified tuition program as defined in 26 U.S.C. sec. 529, the purchaser may do so under administrative regulations promulgated by the board.*
- (8) *The board may terminate a prepaid tuition contract at any time due to the fraud or misrepresentation of a purchaser or qualified beneficiary with respect to the prepaid tuition contract.*

Approved March 07, 2002