

CHAPTER 111

(SB 96)

AN ACT relating to postsecondary education finance.

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

Section 1. KRS 164.740 is amended to read as follows:

As used in KRS 164.740 to 164.7891, the terms listed below shall have the following meanings:

- (1) "Authority" means the Kentucky Higher Education Assistance Authority.
- (2) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority.
- (3) ~~["Business school" means any business school which is accredited by the Accrediting Commission for Independent Colleges and Schools or any successor recognized by the United States Department of Education, and which provides a program of study leading to the granting of a postsecondary degree or diploma.~~
- (4) ~~"College" means an institution governed by the board of regents of the Kentucky Community and Technical College system or any postsecondary educational institution of higher learning which is accredited by a regional accrediting association recognized by the United States Department of Education, and which provides a program of study leading to the granting of a postsecondary degree, diploma, or certificate.~~
- (5) ~~"} "Eligible institution" means, *unless otherwise specified in this chapter*, any educational institution or class of institutions designated *as an institution of higher education* pursuant to *section 102 of the federal act, 20 U.S.C. section 1002*,~~[or this chapter]~~ as eligible to participate in, *and that actively participates in, the Federal Pell Grant Program or, for purposes of insured student loans, is defined as an eligible institution pursuant to section 435 of the federal act, 20 U.S.C. section 1085*~~[authority administered programs]~~, provided that no right of participation shall be deemed vested pursuant to this subsection in any institution, including, but not by way of limitation, any college, school of nursing, vocational school, or business school.~~
- (4)~~(6)~~ "Eligible lender" means any entity described as eligible pursuant to the federal act to make or originate insured student loans, provided that no right of participation shall be deemed vested hereby in any lender.
- (5)~~(7)~~ "Eligible student" means any student enrolled or accepted for enrollment at a participating institution, meeting the criteria established by the federal act and this chapter for the various authority administered programs.
- (6)~~(8)~~ "Endorser" means a person who signs a student loan promissory note as an accommodation party, in the manner of KRS 355.3-419, and is secondarily liable for payment on such note.
- (7)~~(9)~~ "Federal Act" means the Higher Education Act of 1965, Pub. L. 89-329, as amended.
- (8)~~(10)~~ "Grant" means a gift of money, tuition discount, waiver of tuition and fees, or other monetary award that requires neither employment nor repayment, except under conditions prescribed by the board, and is based on demonstrated financial need and such other terms and conditions as the board may prescribe.

- (9){(11)} "Honorary scholarship" means a certificate of merit or achievement or other appropriate document which may be issued by the board to students in recognition of superior academic ability or achievement or a special talent.
- (10){(12)} "Insured student loan" means a loan to an eligible borrower, who is qualified under the federal act, on which the payment of principal and interest is insured as evidenced by a loan guarantee issued by the authority and reinsured by the secretary under the federal act.
- (11){(13)} "Loan" means an advance of money, to be used exclusively for payment of educational expenses, evidenced by a promissory note or similar instrument requiring repayment under specified conditions.
- (12){(14)} "Loan guarantee" means the certificate, document, or endorsement issued by the authority as evidence of insurance of a loan as to both principal and interest and of reinsurance by the secretary under the federal act.
- (13){(15)} "Participating institution" means any eligible institution, to the extent that it offers an eligible program of study, having a contract in force with the authority, if required by the authority, on such terms as the authority may deem necessary or appropriate to the administration of its programs.
- (14){(16)} "Participating lender" means any eligible lender, including the authority and the Kentucky Higher Education *Student* Loan Corporation, which has in force a contract with the authority providing for loan guarantee to be issued by the authority under the federal act and this chapter.
- (15){(17)} "Penal institution" means any penitentiary, detention facility, adult correctional facility, jail, or other similar institution operated by the state, local, or federal government or by private business.
- (16){(18)} "Recognition award" means an advance of money to or on behalf of a student in recognition of superior academic ability, achievement or special talent.
- (17){(19)} "Regional accrediting association" means the Middle States Association of Colleges and Schools, Commission on Higher Education; New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, Higher Learning Commission; Northwest Association of Schools and Colleges, Commission on Colleges; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.
- (18){(20)} "Scholarship" means a gift of money to provide an incentive for fulfillment of a particular public purpose which may be based on *any combination of* financial need, ~~and~~ superior academic ability, ~~or~~ achievement, ~~or~~ a special talent, *or special condition serving a public purpose* and such other terms and conditions as the board may prescribe.
- ~~(19){(21)} "School of nursing" means any training program in the field of nursing, including one regarding nurse aides, which is accredited by the Kentucky Board of Nursing Education and Nurse Registration, or any successor, and which provides a program of study leading to the granting of a postsecondary degree or diploma.~~
- (22)} "Secretary" means the United States Secretary of Education.
- ~~{(23)} "Vocational school" means a vocational technical school accredited by the Accrediting Commission for Career Schools and Colleges of Technology or the National Council for~~

~~Workforce Education, or any successor recognized by the United States Department of Education, which provides a program of study leading to the granting of a postsecondary degree, diploma, or certificate.]~~

(20)~~[(24)]~~ "Work study" means an award of money disbursed by the board at specified intervals to students, or as reimbursement to employers of students, who provide needed services for a specified number of hours in a capacity approved by the board.

Section 2. KRS 164.748 is amended to read as follows:

The board shall have the following powers, functions, and duties:

- (1) To provide loan guarantees, upon terms and conditions the board may prescribe within the limitations provided by KRS 164.740 to 164.770, and the federal act in respect of loans to eligible borrowers. The board may require additional security, including endorsers it deems necessary and desirable and is not in contravention of the federal act. The purpose of the loans shall be to assist individuals in meeting the expense of their education.
- (2) To enter into agreements and undertakings with the secretary as may be required and necessary pursuant to the federal act in order to constitute the authority as a state agency qualified and empowered to insure student loans within the meaning of the federal act and to qualify insured student loans for interest payments, reimbursement, reinsurance, and other benefits available under the federal act to the authority.
- (3) To issue loan guarantees in respect of loans made to eligible borrowers by participating lenders, including the authority.~~[No eligible borrower shall obtain an insured student loan from more than one (1) participating lender without prior approval by the board.]~~ No loan guarantee shall be issued, executed, and delivered by the authority unless any insured student loan resulting shall be the subject of agreements pursuant to the federal act by which the insured student loan is made the subject of interest payments, reimbursements, reinsurance, and other benefits to the extent provided by the federal act.
- (4) To promulgate administrative regulations pursuant to KRS Chapter 13A pertaining to insured student loans, loan guarantees, loans, and work-study payments and the awarding of grants, scholarships, and honorary scholarships, as provided in KRS 164.740 to ~~164.785]~~ **164.7891**.
- (5) To enter into contracts with eligible lenders, approved by the state to lend moneys, upon terms and conditions agreed upon between the authority and the eligible lender, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans.
- (6) To enter into contracts with eligible institutions, upon terms and conditions agreed upon between the authority and the eligible institution, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans.
- (7) To receive funds from any source, public or private, by gift, grant, bequest, loan, or otherwise, either absolutely or in trust, and to expend them, on behalf of the authority and for any of its purposes; and to acquire from any source, public or private, by purchase, lease, gift, bequest, or devise, any property, real, personal, or mixed, absolutely or in trust, and to hold, administer, and dispose of it, on behalf of the authority and for any of its purposes. The authority shall not make its debts payable out of any funds except those of the authority.

- (8) To administer federal funds allotted to the state in respect of insured student loans, loan guarantees, loans, work-study, grants, *scholarships*, administrative costs, and related matters.
- (9) To sue and be sued in the name of the authority and to plead and be impleaded, and to purchase, on behalf of members of the board or officers and employees of the authority, liability insurance for individual protection from liability for acts and omissions committed in the course and scope of the individual's employment or service.
- (10) To collect from individual borrowers loans made by the authority and insured student loans on which the authority has been compelled to meet its loan guarantee obligations following the inability of the participating lender involved to collect the insured student loans.
- (11) To gather information on all loans, scholarships, honorary scholarships, grants, and work-study opportunities available to Kentucky residents attending or planning to attend an eligible institution and to disseminate the information through the methods of mass communication necessary to ensure that Kentucky residents are aware of financial resources available to those attending or desiring to attend an eligible institution.
- (12) To request reports from each eligible institution or eligible lender necessary for the effective performance of its duties and to publish the information it deems necessary.
- (13) To approve, disapprove, limit, suspend, or terminate the participation of, or take emergency action to withhold authority funds and insured student loans from eligible institutions or eligible lenders in programs administered by the board, subject to the provisions of the federal act and this chapter.
- (14) To perform other acts necessary or appropriate to carry out effectively the purposes of the authority as provided by KRS 164.740 to 164.7891 and KRS 164A.010 to 164A.380.
- (15) If any conflict exists between KRS 164.740 to 164.770 and the federal act, which conflict would result in a loss by the authority of any federal funds, including, but not by way of limitation, federal funds made available to the authority under the federal act, including interest payments and reimbursement for insured student loans in default, to promulgate regulations and policies consistent with the federal act not in derogation of the Constitution and general laws of the Commonwealth.
- (16) Except where specifically prohibited by law, to secure data from any other Commonwealth of Kentucky agency or instrumentality or from any other source in furtherance of any purposes of the authority related to any program or function administered by the authority.
- (17) To enter into contracts with public or private nonprofit agencies, eligible to hold or insure student loans under the federal act, to provide for the exchange of information, not in contravention of any federal or state law, or the provision of services necessary to the administration of the authority's insured student loan programs.
- (18) To enter into contracts with the Kentucky Higher Education Student Loan Corporation, *the Kentucky Educational Savings Plan Trust*, and *the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund* as *necessary or appropriate to facilitate their common administration, operation, and management*, as required pursuant to KRS Chapter 164A.
- (19) To conduct, in accordance with KRS Chapter 13B, administrative hearings pertaining to any adverse action by the authority affecting participating institutions and lenders, eligible students, and borrowers of loans made by the authority and insured student loans guaranteed

by the authority. Wage garnishment hearings and administrative review procedures pertaining to disputes concerning setoff of federal tax refunds shall be exempt under KRS 13B.020 and shall be conducted in accordance with applicable federal law. In an exempt hearing, the board or a hearing officer designated by the board may issue administrative subpoenas for the attendance of witnesses and the production of documents relevant to the issues in dispute. Compliance with the subpoenas shall be enforceable by a court of competent jurisdiction.

- (20) To provide upon termination of the retirement plan authorized by Executive Order 75-964 to active and retired employees of the authority who participated in that plan, health insurance premiums and disability insurance benefits as provided to employees who participate in a state-administered retirement system pursuant to KRS 18A.225 to 18A.229, 61.600, and 61.702.
- (21) To delegate to the executive director general supervision and direction over the administrative function of the authority and its employees in carrying out the policies, programs, administrative regulations, and directives of the board.

Section 3. KRS 164.753 is amended to read as follows:

- (1) In the instance of loans, the rules and regulations adopted by the board may include, but not be limited to, those which:
 - (a) Are necessary to qualify the authority as an insured lender under the Higher Education Act of 1965, as amended;
 - (b) Require that loans be made only to those eligible students who are unable to secure comparable loans from private lenders; and
 - (c) Are necessary to qualify the authority as a lender under the Public Health Service Act, as amended.
- (2) In the instance of insured student loans and loan guarantees, the rules and regulations adopted by the board shall include, but not be limited to, those which are necessary to qualify the authority to insure loans under the federal act, as amended, and following such qualification to issue loan guarantees to participating lenders on any loans advanced by such lenders to eligible students attending or planning to attend any participating institution.
- (3) In the instance of scholarships, except scholarships provided pursuant to KRS 164.518, the rules and regulations adopted by the board shall include, but not be limited to, those which:
 - (a) Specify ways in which superior academic achievement or ability or special talents will be identified and measured;
 - (b) Ensure that the amount of scholarship to a student attending or planning to attend a participating institution will not exceed the *student's total cost of attendance* ~~[financial need of the student as determined in accordance with paragraph (f) of this subsection]~~, or the maximum scholarship as established by the board, whichever is less;
 - (c) Restrict scholarships to persons who are classified as resident students under the rules and regulations of the Council on Postsecondary Education;
 - (d) Ensure that scholarships are awarded only to eligible students who have applied for such federal, state, or institutional student financial assistance programs as the authority may require;

- (e) Ensure that scholarships are awarded only to eligible students who are planning to enroll, accepted for enrollment, or are enrolled~~[as full-time students]~~ in a participating institution; and
 - (f) ***If eligibility for the scholarship is based on financial need***, ensure, by such needs analysis as the authority may require, that the person is in need of the assistance in order to enroll in or complete an eligible program of study as defined by the board.
- (4) In the instance of grants, the rules and regulations adopted by the board shall include, but not be limited to, those which:
- (a) Ensure that the amount of a grant to a student will not exceed the financial need of the student as determined in accordance with paragraph (e) of this subsection or the maximum grant as established by the board, whichever is less;
 - (b) Restrict grants to persons who are classified as resident students under the rules and regulations of the Council on Postsecondary Education;
 - (c) Ensure that grants are awarded only to eligible students who have applied for such federal, state, or institutional student financial assistance programs as the authority may require;
 - (d) Ensure that grants are awarded only to eligible students who are planning to enroll, accepted for enrollment, or are enrolled~~[as full-time students]~~ in a participating institution; and
 - (e) Ensure, by such needs analysis as the authority may require, that grants be made only to students who have insufficient financial resources to enroll in or complete an eligible program of study as defined by the board.
- (5) Funds appropriated to the financial assistance program established by KRS 164.780 and 164.785 shall be administered by the board in accordance with the provisions of KRS 164.780 and 164.785.
- (6) In the instance of work-study payments, rules and regulations adopted by the board shall include, but not be limited to, those which require that:
- (a) The employment opportunity available for the student will not interfere with the student's normal progress toward a degree, diploma, or certificate;
 - (b) Contracts to promote increased employment opportunities for eligible students will not result in the displacement of employed workers or impair existing contracts for services; and
 - (c) The work-study payment will not exceed the financial need of the student or the maximum payment as established by the board, whichever is less.

Section 4. KRS 164.7535 is amended to read as follows:

Notwithstanding KRS 164.753(4)(d), the Kentucky Higher Education Assistance Authority may award college access program grants pursuant to KRS 164.753(4), to the extent funds are available for the purpose, to financially needy part-time and full-time undergraduate students, including students enrolled in a program of study designated as an equivalent undergraduate program of study by the Council on Postsecondary Education in an administrative regulation. ***Grants shall be awarded only to students***~~[,]~~ enrolled or accepted for enrollment at participating institutions~~[that are colleges, business schools, schools of nursing, or vocational schools]~~ located within the Commonwealth. Grants under this section~~[to recipients attending colleges]~~ shall be

awarded only for attendance in a program of study of at least two (2) academic years' duration ~~that leads to a degree, and shall not exceed the prevailing amount charged for tuition at publicly-supported community colleges in Kentucky~~. Grants under this section shall be awarded *only* to students enrolled or accepted for enrollment *for attendance in a program of study that leads to a degree, except that grants shall be awarded to students enrolled or accepted for enrollment* at publicly-operated vocational-technical institutions ~~only~~ for attendance in a program of study ~~of at least two (2) academic years' duration~~ that leads to a certificate, ~~or~~ diploma, *or degree*. Awards to recipients attending *participating institutions accredited by a regional accrediting association shall not exceed the prevailing amount charged for tuition at publicly-supported community and technical colleges in Kentucky, and awards to recipients attending other participating institutions* ~~business schools, schools of nursing, or vocational schools~~ shall not exceed the prevailing amount charged for tuition at publicly-operated vocational-technical institutions in Kentucky. The provisions of this section shall not limit the authority's capability to use funds appropriated for this purpose to match federal funds, make grant awards, adopt administrative regulations that conform to the requirements of federal laws and regulations for full participation in federally-funded student financial assistance programs.

Section 5. KRS 164.785 is amended to read as follows:

- (1) The State of Kentucky shall grant an amount as provided in KRS 164.780 and this section to any applicant who meets the following qualifications:
 - (a) Is a Kentucky resident as defined by the Kentucky Council on Postsecondary Education;
 - (b) Has been accepted by or is enrolled as a full-time student in a *program of study leading to a postsecondary degree at a* Kentucky independent college or university which is accredited by a regional accrediting association recognized by the United States Department of Education and whose institutional programs are not composed solely of a sectarian instruction. An otherwise eligible student having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. secs. 12131 et seq.), certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability may also qualify under this paragraph; and
 - (c) Has not previously attended college or university ~~for~~ more than *the maximum number of academic terms established by the authority in administrative regulations* ~~seven (7) semesters or the equivalent~~.
- (2) The amount of the tuition grant to be paid to a student each semester, or appropriate academic term, shall be determined by the Kentucky Higher Education Assistance Authority.
- (3) The maximum amount shall not exceed fifty percent (50%) of the average state appropriation per full-time equivalent student enrolled in all public institutions of higher education. Such tuition grants are to be calculated annually by the Kentucky Higher Education Assistance Authority.
- (4) The need of each applicant shall be determined by acceptable need analysis such as *use of the free application for federal student aid in conjunction with Part E of the federal act, 20 U.S.C. sections 1087kk through 1087vv* ~~the parents' confidential statement of the college scholarship service~~, and such other analyses as the authority may determine, subject to the approval by the United States Secretary of Education.

- (5) An adjustment shall be made in the tuition grant of any student awarded a scholarship from any other source provided the combination of grants and awards exceeds the calculated need of the student.

Section 6. KRS 164.7881 is amended to read as follows:

- (1) Eligible high school students who have graduated from high school and eligible postsecondary students who have earned a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and a supplemental award, or a supplemental award only pursuant to KRS 164.7879(3)(c), shall be eligible to receive the Kentucky educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or a supplemental award only for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.
- (2) To receive the Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, an eligible high school or postsecondary student shall:
- (a) Enroll in and attend a participating institution as a full-time student or a part-time student; and
- (b) Maintain eligibility as provided in subsection (3) of this section.
- (3) Eligibility for a Kentucky educational excellence scholarship or a Kentucky educational excellence scholarship and supplemental award shall terminate upon the earlier of:
- (a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or
- (b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, for a cumulative total of eight (8) academic terms if the student enrolls as at least a part-time student in a four (4) year program.
- (4) (a) The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible postsecondary student for an award period shall be **delivered**~~disbursed~~ by the authority to the **participating institution for disbursement to the** eligible postsecondary student~~in two (2) installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period~~.
- (b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible postsecondary student for any academic term in which the student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible postsecondary student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible postsecondary student, **except if the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of**

this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period.

- (c) 1. An eligible postsecondary student who is enrolled full-time in an undergraduate program of study, in the pharmacy program at the University of Kentucky, or in a program of study designated as an equivalent undergraduate program of study by the Council on Postsecondary Education in an administrative regulation, shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study.
2. To retain the maximum award for the second award period, an eligible postsecondary student shall have at least a 2.5 grade point average at the end of the first award period, *except that if the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period, the eligible postsecondary student shall, subject to paragraph (b) of this subsection, retain the maximum award for the award period in which he or she resumes enrollment.*
3. To retain the maximum award amount for subsequent award periods, an eligible postsecondary student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period, *except that if the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period, the eligible postsecondary student shall, subject to paragraph (b) of this subsection, retain the same award for the award period in which he or she resumes enrollment as he or she received in the award period in which enrollment was interrupted.*
- 4.~~[2.]~~ Any eligible postsecondary student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.
- 5.~~[3.]~~ Any eligible postsecondary student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.
- 6.~~[4.]~~ Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each Kentucky educational excellence scholarship recipient enrolled as a full-time or part-time student at the participating institution.
- 7.~~[5.]~~ Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.

- (5) The expiration of a student's *eight (8) academic terms and* five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:
- (a) A serious and extended illness or injury of the student, certified by an attending physician;
 - (b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;
 - (c) Natural disasters that would render a student unable to attend classes; or
 - (d) Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.
- (6) An eligible postsecondary student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the Kentucky educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or the supplemental award only for a maximum of ten (10) academic terms. The expiration of an eligible postsecondary student's five (5) year eligibility shall be extended to six (6) years for eligible postsecondary students meeting the requirements of this subsection.
- (7) Each eligible high school student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Senator Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District, and shall be recognized by the high school in a manner consistent with recognition given by the high school to other high levels of academic achievement.

Section 7. KRS 164A.050 is amended to read as follows:

- (1) There is hereby created and established an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky which shall be a body corporate and politic to be known and identified as the Kentucky Higher Education Student Loan Corporation.
- (2) The Kentucky Higher Education Student Loan Corporation is created and established as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky to perform essential governmental and public functions and purposes in improving and otherwise promoting the educational opportunities of the citizens and inhabitants of the Commonwealth of Kentucky and other qualified students by a program of financing, making, and purchasing of insured student loans.
- (3) (a) Subject to paragraph (b) of this subsection, the corporation shall be governed by a board of directors consisting of:
 - 1. Eight (8) voting members chosen from the general public residing in the Commonwealth of Kentucky; and
 - 2. Seven (7) voting members of the board of directors of the Kentucky Higher Education Assistance Authority appointed by the Governor pursuant to KRS 164.746(1)(a)1., who shall serve terms of office on the corporation board of

directors coextensive with their respective terms of office on the Kentucky Higher Education Assistance Authority board of directors.

- (b) Upon resignation or expiration of the term of an appointed member of the board of the corporation and the Kentucky Higher Education Assistance Authority, that member's position shall be abolished to reduce the combined number of appointed members of the boards of the corporation and the Kentucky Higher Education Assistance Authority to ten (10) members.
 - (c) In addition, the president of the Council on Postsecondary Education, the secretary of the Finance and Administration Cabinet, the president of the Association of Independent Kentucky Colleges and Universities, the State Treasurer, and the commissioner of education, or their designees who shall be another official of the same cabinet or agency, shall serve as ex officio voting members.
- (4) The Governor shall appoint directors according to subsection (3)(a)1. of this section from nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005 to take office and to exercise all powers thereof immediately. The terms shall be staggered and shall be for a period of four (4) years each. Each director shall serve for the appointed term and, except as provided in subsection (3)(b) of this section, shall serve until a successor has been appointed and has duly qualified.
 - (5) Except as provided in subsection (3)(b) of this section, in the event of a vacancy, the Governor may appoint a replacement director from nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005 who shall hold office during the remainder of the term so vacated.
 - (6) The Governor may remove any director from the general public in case of incompetency, neglect of duties, gross immorality, or malfeasance in office; and may thereupon declare such office vacant and may appoint a person to fill such vacancy as provided in other cases of vacancy.
 - (7) The board shall elect from its voting membership a chair, chair-elect, and secretary-treasurer. The executive director of the Kentucky Higher Education Assistance Authority shall serve as executive director of the corporation.
 - (8) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary-treasurer of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary-treasurer may copy all minutes and other records and documents of the corporation and give certificates under the official seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.
 - (9) A majority of the board of directors of the corporation shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes notwithstanding the existence of any vacancies in respect of the board of directors.
 - (10) Official actions may be taken by the corporation at meetings duly called by the chair upon three (3) days' written notice to each director or upon the concurrence of at least a majority of the directors. 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.

- (11) Directors, except officers or employees of the state, shall receive one hundred dollars (\$100) compensation per day for their services and shall be entitled to payment of any reasonable and necessary expense actually incurred in discharging their duties under this chapter.
- (12) ***Recognizing that the corporation and the Kentucky Higher Education Assistance Authority are governed by identical boards of directors and managed by a common executive director and otherwise share staff functions, the two (2) organizations***~~[, the "guarantee agency";]~~ shall provide technical, clerical, and administrative assistance to ***each other and for the Kentucky Educational Savings Plan Trust and the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund***~~[the corporation]~~, together with necessary office space and personnel, and shall assist ***each other***~~[the corporation]~~ in all ways by the performance of any and all actions which may be useful or beneficial~~[to the corporation]~~ in the performance of ***their***~~[its]~~ public functions~~[as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky charged with the responsibility of financing, making, and purchasing of insured student loans]~~.
- (13) The corporation shall enter into~~[such]~~ contracts with the ***Kentucky Higher Education Assistance Authority, the Kentucky Educational Savings Plan Trust, and the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund***~~[guarantee agency]~~ as ***may***~~[shall]~~ be proper and appropriate in respect to~~[of such]~~ services which may include~~[,]~~ but not ***be limited to the***~~[by way of limitation,]~~ servicing and collection of insured student loans ***or to facilitate the common administration, operation, and management of the contracting entities.***

Section 8. KRS 164A.060 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the following powers:

- (1) To make or participate in the making of insured student loans.
- (2) To purchase or participate in the purchase of insured student loans, which purchase may be from eligible lenders.
- (3) To sell or participate in the sale of insured student loans, which sale may be to eligible lenders or to the student loan marketing association.
- (4) To collect and pay reasonable fees and charges in connection with making, purchasing, and servicing or causing to be made, purchased, or serviced insured student loans by the corporation, including payment to the guarantee agency for services performed for the corporation.
- (5) To procure insurance in respect of all student loans made or purchased by the corporation.
- (6) To consent whenever it deems it necessary or desirable in the fulfillment of its corporate purposes to the modification of the rate of interest, time of payment of any installment of principal or interest or any other terms of any insured student loan to which the corporation

is a party; provided, that no such consent shall be made or given if the effect of same would be to obviate insurance coverage in respect of any student loan.

- (7) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on its obligations for a period not exceeding two (2) years from their date, consulting, advisory and legal fees, and such other expenses as are necessary or incident to any such borrowing.
- (8) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes.
- (9) To make, execute, and effectuate any and all agreements or other documents with any federal or state agency or any person, corporation, association, partnership, or other organization or entity ***and perform other acts necessary or appropriate*** to accomplish ***effectively*** the purposes of this chapter.
- (10) To accept appropriations, loans, grants, revenue sharing, devises, gifts, bequests and federal grants, and any other aid from any source whatsoever and to agree to, and to comply with, conditions incident thereto.
- (11) To sue and be sued in its own name and to plead and be impleaded.
- (12) To maintain an office in the city of Frankfort, Kentucky, in conjunction with or in close proximity to the Kentucky Higher Education Assistance Authority and such other regional offices as may be required.
- (13) To adopt an official seal and alter the same at pleasure.
- (14) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.
- (15) To employ fiscal consultants, attorneys, counselors, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation.
- (16) To invest any funds held in reserves or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the United States or its agencies and instrumentalities; provided, however, that the return on such investments shall not be violative of any laws and regulations regarding investment of the proceeds of any federal tax-exempt bond issue.
- (17) To issue its bonds and notes for the purpose of carrying out its corporate powers and duties as set forth in this chapter.
- (18) To service and collect educational loans for other lenders, holders, and educational institutions.
- (19) ***Except where specifically prohibited by law, to secure data from any other Commonwealth of Kentucky agency or instrumentality or from any other source in furtherance of any purposes of the corporation related to any program or function administered by the corporation.***

Section 9. KRS 164A.350 is amended to read as follows:

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

- (1) The trust shall exercise 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. 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 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, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) 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 KRS 164A.701, 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 may be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) of this section;
- (5) The institution of higher education shall obtain ownership of the distributions made from the participant's account for the higher education costs paid to the institution at the time each payment is made to the institution;
- (6) Any amounts received by the trust pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section shall be owned by the trust;
- (7) A participant may transfer the participant's rights to another eligible participant, including, but not limited to, a gift of the participant's rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be effected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;
- (8) 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 ~~may~~~~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) 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 10. A NEW SECTION OF KRS 164A.550 TO 164A.630 IS CREATED TO READ AS FOLLOWS:

If the governing board is unable to pay the required principal and interest payments due on agency bonds issued by the postsecondary institution from system revenues or from other available agency revenues and the governing board fails to transmit to the paying agent bank or trustee the debt service and administrative payments when due as required by the bond issuance resolution, the paying agent bank or trustee shall notify the secretary of the Finance and Administration Cabinet in writing and request that the cabinet withhold or intercept from the governing board a sufficient portion of any appropriated state funds not yet disbursed to the institution to satisfy the required payment on the bonds. If the secretary determines that the institution is in risk of defaulting on the payment of the bonds or has defaulted, the secretary shall notify the governing board and within five (5) days remit payment to the paying agent bank or trustee such funds as are required from the appropriation to the institution. Thereafter, the governing board shall, to the extent it is otherwise legally permitted, take action within sixty (60) days to adopt a resolution to generate additional revenues, such as increasing the minimum rents, tolls, fees, and other charges, in order to positively adjust remittances to the funds accounts. Nothing in this section shall be construed to create any obligation on the part of the Commonwealth to make any payment on behalf of the defaulting institution other than from funds previously appropriated to the governing board of that institution.

Approved April 9, 2004