

CHAPTER 162**(HB 184)**

AN ACT relating to the Commonwealth postsecondary education prepaid tuition trust fund.

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

Section 1. KRS 164.746 is amended to read as follows:

- (1) The authority shall be governed, all of its powers shall be exercised, and its duties and functions shall be performed by a board of directors.
 - (a) Subject to paragraph (b) of this subsection, voting members of the board shall consist of:
 1. Seven (7) members who shall be appointed from the general public residing in the Commonwealth of Kentucky by the Governor from nominees submitted by the Governor's Postsecondary Education Nominating Committee under KRS 164.005; and
 2. Eight (8) members of the board of directors of the Kentucky Higher Education Student Loan Corporation appointed by the Governor pursuant to KRS 164A.050(3)(a)1., who shall serve terms of office on the authority board of directors coextensive with their respective terms of office on the Kentucky Higher Education Student Loan Corporation board of directors.
 - (b) Upon resignation or expiration of the term of an appointed member of the board of the authority or the Kentucky Higher Education Student Loan Corporation, that member's position shall be abolished to reduce the combined number of appointed members of the boards of the authority and the Kentucky Higher Education Student Loan Corporation to ten (10) members.
 - (c) In addition, the president of the Council on Postsecondary Education, the president of the Association of Independent Kentucky Colleges and Universities, the State Treasurer, the commissioner of education, and the secretary of the Finance and Administration Cabinet, or their designees who shall be another official of the same cabinet or agency, shall serve as voting ex officio members.
 - (d) The term of office of appointed members shall be four (4) years. Each member shall serve for the term for which he is appointed and, except as provided in paragraph (b) of this subsection, shall serve until his successor is appointed.
- (2) Subject to paragraph (b) of subsection (1) of this section, appointments to fill vacancies on the board shall be made in the same manner as regular appointments. The person appointed shall hold the position for the unexpired portion of the term only.
- (3) The board shall elect from its voting membership a chair, chair-elect, and secretary-treasurer who shall each serve for a term of one (1) year. At the conclusion of the chair's term of office, the chair-elect shall become the chair for the succeeding year and the board shall elect from its voting membership a new chair-elect.
- (4) Board members, except officers or employees of the state, shall receive compensation for their services, in the amount of one hundred dollars (\$100) per day, and may be reimbursed for actual and necessary expenses incurred in the performance of their duties under KRS 164.740 to 164.785.

- (5) The board shall provide for the holding of regular meetings and special meetings.
 - (a) A majority of the voting members shall constitute a quorum for the transaction of any business, special meetings shall be called by the chair in accordance with KRS 61.823, and either the chair or the chair-elect shall be present for the transaction of any business.
 - (b) In lieu of personal attendance by members of the board of directors at the same location, the board of directors may conduct meetings by teleconference or other available technological means suitable for conducting its business. Meetings of the board shall be open and accessible to the public in accordance with KRS 61.805 to 61.850, and any alternate method of conducting a meeting in lieu of personal attendance shall ensure public access.
- (6) The board shall adopt bylaws and policies governing its internal affairs and the conduct of its business, and shall adopt administrative regulations pursuant to KRS Chapter 13A, not inconsistent with law, in connection with the administration of the authority's programs and the performance of its functions and duties.
- (7) The board may:
 - (a) Appoint such officers and employees as necessary and may fix their compensation, and shall prescribe their duties notwithstanding personnel limits established by KRS 18A.010 or the biennial budget and its related documents; and
 - (b) Adopt the provisions of KRS 45A.345 to 45A.460, pursuant to KRS 45A.343.

~~[(8) The Office of the Treasurer and the board of the Kentucky Higher Education Assistance Authority shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.]~~

Section 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 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 164.7891.
- (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 act as the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund under KRS 164A.700 to 164A.709.***
- (20) 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.
- ~~(21)~~~~(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.
- ~~(22)~~~~(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 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 institution;
- (2) "Board" means the board of directors of the ***Kentucky Higher Education Assistance Authority acting in the capacity of 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(e)(5);

- (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) ~~["Office" means the Tuition Account Program Office in the Office of the State Treasurer that is responsible for administering the prepaid tuition accounts;~~
- ~~(6)~~ "Prepaid tuition" means the amount of tuition estimated by the board for the tuition plan under the prepaid tuition contract;
- ~~(6)~~~~(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;
- ~~(7)~~~~(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;
- ~~(8)~~~~(9)~~ "Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;
- ~~(9)~~~~(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 institution as provided in KRS 164A.700 to 164A.709;
- ~~(10)~~~~(11)~~ "Prepaid tuition conversion" means the difference between the value of a prepaid tuition account and the tuition at an eligible educational institution;
- ~~(11)~~~~(12)~~ "Prepaid tuition conversion shortfall" means the amount by which the actual tuition cost at an eligible educational institution exceeds the amount of the value of a prepaid tuition account;
- ~~(12)~~~~(13)~~ "Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;
- ~~(13)~~~~(14)~~ "Qualified beneficiary" means *a designated beneficiary, as defined in 26 U.S.C. sec. 529(e)(1), who is:*
- (a) ~~A~~~~Any~~ Kentucky resident designated as beneficiary at the time a purchaser enters into a prepaid tuition contract; or
 - (b) ~~A~~~~Any~~ nonresident designated at the time a purchaser enters into a prepaid tuition contract who intends to attend an eligible institution in Kentucky; or
 - (c) ~~A~~~~The~~ new beneficiary, in the case of a change of beneficiaries under provisions of KRS 164A.707; or
 - (d) ~~An~~~~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;
- (14) "*Qualified postsecondary education expenses*" means *qualified higher education expenses as defined in 26 U.S.C. sec. 529(e)(3);*

- (15) "Tuition" means the *prevailing tuition*~~[actual charges]~~ and all mandatory fees *charged*~~[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 institution;
- (16) "*Tuition Account Program Office*" or "*office*~~[Qualified postsecondary education expenses]~~" means the *office in the Kentucky Higher Education Assistance Authority that is responsible for administering the prepaid tuition program and its accounts*~~[expenses as defined in 26 U.S.C. sec. 529]~~;
- (17) "Tuition plan" means a tuition plan approved by the board and provided under a 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.

Section 4. KRS 164A.701 is amended to read as follows:

- (1) (a) 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 be attached to the Kentucky Higher Education Assistance Authority for administrative and reporting purposes, but shall be governed, managed, and administered as a separate and distinct instrumentality of the Commonwealth with its own powers specified in KRS 164A.700 to 164A.709.*
- (b) 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.
- (c) *Notwithstanding any other statute to the contrary, all moneys received under the authority of KRS 164A.700 to 164A.709 and KRS 393.015 shall be deemed to be trust funds to be held and applied solely for payment to qualified beneficiaries and purchasers and to meet the expenses necessary for the administration and maintenance of the fund as provided in KRS 164A.700 to 164A.709.*
- (d) The fund shall not constitute an investment company as defined in KRS 291.010.
- (e) *Obligations under a prepaid tuition contract incurred in accordance with the provisions of KRS 164A.700 to 164A.709 shall not be deemed to constitute a debt, liability, or obligation of the Kentucky Higher Education Assistance Authority, but shall be payable solely from the fund. Each prepaid tuition contract shall contain a statement that the obligation shall be payable solely from the fund.*
- (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 *Tuition Account Program Office* and the facilities of the *Kentucky Higher Education Assistance Authority*~~[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) (a) Assets of the fund shall ~~constitute public funds of the Commonwealth and may~~ be invested in any *of the following* ~~instrument, obligation,~~ security *types* ~~, or property that constitutes legal investments for the investment of public funds in the Commonwealth~~ that are deemed ~~most~~ appropriate by the board:
1. *Government and agency bonds;*
 2. *Investment grade asset-backed securities and corporate bonds;*
 3. *Mortgages, excluding interest only (IO), principal only (PO), and inverse floaters; and*
 4. *Equities.*
- (b) *Equities shall constitute no greater than sixty percent (60%) of the entire portfolio, including up to ten percent (10%) in equities from outside the United States.*
- (c) *The duration of the fixed-income portion of the portfolio shall reflect the future liability of the fund for tuition payments.*
- (d) Assets ~~and~~ may be pooled for investment purposes with any other investment of the Commonwealth that is eligible for asset pooling.
- (e) *Leveraging is strictly prohibited.*
- (5) The ~~board~~ ~~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 *together with funds that are obtained from sources legally available and determined by the board to be applicable for the purposes of KRS 164A.700 to 164A.709.*
- (6) There is created a separate account within the *Kentucky Higher Education Assistance Authority* ~~State Treasurer's office~~ to be known as the prepaid postsecondary tuition administrative account for the purposes of implementing and maintaining the fund.
- (a) *Moneys shall be transferred from the fund to the administrative account to meet the expenses necessary for the administration and maintenance of the fund. Expenses incurred by the board and the Tuition Account Program Office in carrying out the provisions of KRS 164A.700 to 164A.709 shall be made payable from the fund through the administrative account, and no administrative expenses shall be incurred by the Kentucky Higher Education Assistance Authority beyond those for which moneys are provided by the fund.*
- (b) 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.
- (c) 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 5. 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 *subsection (4) of Section 4 of this Act*~~[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 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 an eligible educational 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) ~~Have the~~~~[Obtain appropriate]~~ actuarial *soundness of the*~~[assistance to establish, maintain, and certify a]~~ fund *evaluated by a nationally recognized independent actuary on an annual basis*~~[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:
 - (a) The amount of prepaid tuition for each tuition plan and for each eligible educational institution for specific academic years, the corresponding value; *and*
 - (b) *Whether additional assets are necessary to defray the obligations of the fund. If the assets of the fund are insufficient to ensure the actuarial soundness of the fund, as reported by the actuary, the board shall adjust the price of subsequent purchases of prepaid tuition contracts to the extent necessary to restore the actuarial soundness of the fund. The board may suspend the sale of prepaid tuition contracts until the next annual actuarial evaluation is completed if the board determines the action is needed to restore the actuarial soundness of the fund. During a suspension of sales of contracts, the board and Tuition Account Program Office shall continue to service existing contract accounts and meet all obligations under existing prepaid tuition contracts;*
- (8) Make an annual report each year to the Legislative Research Commission showing the fund's condition;

- (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 6. 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 institution in accordance with the tuition plan purchased.
- (2) ***A board member, officer of the fund, or employee of the Tuition Account Program Office or the Kentucky Higher Education Assistance Authority shall not be subject to any personal liability by reason of his or her issuance or execution of a prepaid tuition contract under KRS 164A.700 to 164A.709.***
- (3) Under a 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.
- ~~(4)~~~~(3)~~ The purchaser or qualified beneficiary shall pay to the eligible educational institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.
- ~~(5)~~~~(4)~~ A qualified beneficiary attending an eligible educational institution may apply the value of a prepaid tuition account 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.
- ~~(6)~~~~(5)~~ The value of a prepaid tuition account remaining after tuition is paid may be used for other qualified educational expenses under administrative regulations promulgated by the board in compliance with 26 U.S.C. sec. 529. The board may permit the use of the value of a prepaid tuition account for part-time undergraduate enrollment or graduate programs at eligible educational institutions.
- ~~(7)~~~~(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.
- ~~(8)~~~~(7)~~ The value of a prepaid tuition account 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 7. KRS 164A.707 is amended to read as follows:

- (1) Purchasers buying prepaid tuition 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 for prepaid tuition for the qualified beneficiary from one (1) to five (5) specific academic years.

- (2) Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:
 - (a) The qualified beneficiary, in accordance with 26 U.S.C. sec. 529;
 - (b) The academic year or years for which prepaid tuition is purchased;
 - (c) A tuition plan designation to another tuition plan designation;
 - (d) The number of years for which prepaid tuition is purchased; or
 - (e) Other provisions of the prepaid tuition contract as permitted 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 shall be exempt from all state and local taxes including, but not limited to, intangible personal property tax levied under KRS 132.020, 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 institution, be allowed to continue to attend an eligible educational institution after having been admitted, or be graduated from an eligible educational 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 KRS 164A.700~~(13)~~~~(14)~~(d). 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 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 8. 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:
 - (a) The value of the prepaid tuition account if the contract is terminated for:
 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 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 tuition contract 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.
- (3) At the option of the purchaser the value of the prepaid tuition account may be carried forward to another academic year or distributed by the fund upon the purchaser's request.
- (4) All refunds paid shall be net of administrative fees as determined by the board. 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) If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser may request a refund consisting of the amount of the value of the prepaid tuition account, not to exceed the amount of the scholarship.
- (6) 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 *directors of the Kentucky Educational Savings Plan Trust under 164A.325* ~~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**(b)(1)**, 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.

Section 9. The following KRS sections are repealed:

41.025 Tuition Account Program Office.

164A.703 Board of directors.

Section 10. This Act takes effect July 1, 2005.

Approved March 18, 2005.