

**CHAPTER 34****( HB 279 )**

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 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" or "Kentucky's Affordable Prepaid Tuition" (KAPT);
- (5) "Prepaid tuition" means the amount of tuition estimated by the board for the tuition plan under the prepaid tuition contract;
- (6) "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) "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) "Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;
- (9) "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) "Prepaid tuition conversion" means the difference between the value of a prepaid tuition account and the tuition at an eligible educational institution;
- (11) "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) "Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;
- (13) "Qualified beneficiary" means a designated beneficiary, as defined in 26 U.S.C. sec. 529(e)(1), who is:
  - (a) A Kentucky resident designated as beneficiary at the time a purchaser enters into a prepaid tuition contract; or
  - (b) A 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 new beneficiary, in the case of a change of beneficiaries under provisions of KRS 164A.707; or
  - (d) An 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 and all mandatory fees charged 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" means the office in the Kentucky Higher Education Assistance Authority that is responsible for administering the prepaid tuition program and its accounts;
- (17) "Tuition plan" means a tuition plan approved by the board and provided under a prepaid tuition contract;~~and~~
- (18) ***"Utilization period" means the period of time in which a prepaid tuition contract is to be used beginning with the projected college entrance year and continuing for the number of prepaid tuition years purchased; and***
- (19) "Value of a prepaid tuition account" means the amount which the fund is obligated to pay for ***a prepaid tuition contract, when a purchaser has paid it in full,***~~tuition for an academic period based on full payment of the purchaser's tuition plan~~ ***that is calculated by multiplying the plan tuition amount for the academic period by the number of prepaid tuition years purchased, less any portion previously paid;*** 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 2. 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 or any 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) 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) 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) 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) ***During an account's utilization period, the value of the prepaid tuition account shall increase consistent with tuition rates for the applicable tuition plan and academic year. If all tuition benefits have not been used at the conclusion of this period, the account value shall increase at a rate of three percent (3%) per annum or the applicable tuition plan value increase, whichever is less, for a period not to exceed two (2) additional years. No additional value shall be added to a prepaid tuition account after two years past the utilization period.***
- (8) If 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.
- ~~(9)~~(8) 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 3. 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 *projected college entrance year*~~[academic year or years]~~ for which prepaid tuition is purchased. ***Beginning with the effective date of this Act, if the amendment extends the projected college entrance year, the utilization period shall begin with the initial projected college entrance year;***
  - (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 a lump sum or 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)(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 4. 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 ***or, if the contract has not been paid in full, a pro-rata amount calculated according to the portion of the plan that had been paid,*** if the contract is terminated for ***the death of the qualified beneficiary or 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;***~~;~~

~~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 *projected college entrance year* ~~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;
- (c) *The value of the prepaid tuition account for the 2014-2015 academic year for accounts with a utilization period end date prior to 2012; or*
- (d) *The value of the prepaid tuition account at the end of the account's utilization period plus three percent (3%) per annum for a maximum of two (2) years thereafter, or the applicable tuition plan value increase, whichever is less, for accounts with a utilization period end date of 2012 or later.*
- (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 *less any benefits previously paid from the plan and any* ~~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.
- ~~(4)~~~~(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.
- ~~(5)~~~~(6)~~ If the purchaser wishes to transfer funds from the prepaid tuition account to the Kentucky Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board and the board of directors of the Kentucky Educational Savings Plan Trust under KRS 164A.325. *The transfer amount shall be calculated in the same way a refund is determined in accordance with this section.*
- ~~(6)~~~~(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. *The transfer amount shall be calculated in the same way a refund is determined in accordance with this section.*
- ~~(7)~~~~(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.
- (8) *All operations of the Commonwealth postsecondary education prepaid tuition trust fund and the Tuition Account Program Office shall end on June 30, 2028. On or before that date, any remaining prepaid tuition account funds that have not been utilized, transferred to another qualified tuition program, or refunded upon the request of the purchaser shall be refunded to the purchaser in accordance with subsection (2) of this section.*

Signed by Governor April 7, 2014.