

CHAPTER 137

(HB 434)

AN ACT relating to the Kentucky Educational Savings Plan Trust.

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

➔Section 1. KRS 164A.305 is amended to read as follows:

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

- (1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;
- (2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;
- (3) "Beneficiary" means:
 - (a) Any person designated at the commencement of participation by a participation agreement to benefit from payments for ~~higher~~ education costs at an **educational** institution ~~of higher education~~;
 - (b) The new beneficiary, in the case of a change of beneficiaries pursuant to KRS 164A.330(4); or
 - (c) The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code;
- (4) "Benefits" means the payment of ~~higher~~ education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an **educational** institution ~~of higher education~~;
- (5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;
- (6) *"Educational institution" means an eligible educational institution under 26 U.S.C. sec. 529(e)(5) or an elementary or secondary public, private, or religious school.* ~~"Higher education costs" means the costs specified in section 529(e)(3) of the Internal Revenue Code of 1986 as amended for attendance at an institution of higher education as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965, 20 U.S.C. sec. 1087H, as amended;~~
- (7) "Institution of higher education" means an institution as defined in Section 529(e)(5) of the Internal Revenue Code of 1986, as amended;
- (8) "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;
- (9) "Participant" means an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code, an individual, firm, corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of **educational** ~~higher education~~ costs on behalf of a beneficiary;
- (10) "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;
- (11) "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;
- (12) "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;
- (13) *"Qualified educational expenses" means:*
 - (a) *With regard to higher education expenses, the costs specified in 26 U.S.C. sec. 529(e)(3) for attendance at an institution of higher education; and*
 - (b) *With regard to elementary and secondary education expenses, tuition of up to ten thousand dollars (\$10,000) per year in connection with enrollment or attendance at an elementary or secondary public, private, or religious school;*

- (14) "Tuition" means the quarterly or semester charges imposed to attend an *educational institution*~~[institution of higher education]~~ and required as a condition of enrollment; *and*
- (15)~~(14)~~ "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

➔Section 2. KRS 164A.310 is amended to read as follows:

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

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

➔Section 3. KRS 164A.325 is amended to read as follows:

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

- (1) Engage investment advisors to assist in the investment of savings plan trust assets;
- (2) Carry out studies and projections in order to advise participants regarding present and estimated future ~~higher~~ education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;
- (3) Contract, in accordance with the provisions of KRS 45A.345 to 45A.460 under KRS 45A.343, for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors

for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;

- (4) Participate in any other way in any federal, state, or local governmental program for the benefit of the savings plan trust;
- (5) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the savings plan trust, and provide for reasonable service charges, including penalties for cancellations and late payments in respect of participation agreements;
- (6) Procure insurance against any loss in connection with the property, assets or activities of the savings plan trust;
- (7) Administer the funds of the savings plan trust;
- (8) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and
- (9) Promulgate reasonable rules and regulations for the administration of the savings plan trust.

➔Section 4. KRS 164A.330 is amended to read as follows:

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

- (1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans and may contain penalties for failure to make contributions when scheduled;
- (2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum contribution participation agreement in connection with which a single, lump-sum contribution is made by the participant for the benefit of a beneficiary;
- (3) Execution of a participation agreement by the trust shall not guarantee in any way that **educational**~~higher education~~ costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will:
 - (a) Be admitted to an **educational** institution~~[of higher education]~~;
 - (b) **Be allowed to continue attendance at the educational institution following admission**~~[If admitted, be determined a resident for tuition purposes by the institution of higher education, unless the participation agreement is vested]~~;
 - (c) **Graduate from the educational institution**~~[Be allowed to continue attendance at the institution of higher education following admission]~~; or
 - (d) **With regard to an institute of higher education, if admitted, be determined to be a resident for tuition purposes by the institution, unless the participation agreement is vested**~~[Graduate from the institution of higher education]~~;
- (4) Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant provided, however, that the substitute beneficiary shall be eligible;
- (5) Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;
- (6) Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky;
- (7) Each participation agreement shall provide that it may be canceled under the terms and conditions, including payment of the fees and costs, set forth in the rules and regulations promulgated by the board;
- (8) The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated ~~higher~~ education costs of the beneficiary;

- (9) The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;
- (10) Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:
- (a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;
 - (b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;
 - (c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and
 - (d) Nothing in this section shall preclude the program administrator or any employee of the board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

➔Section 5. 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 *educational*~~[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 *qualified educational expenses*~~[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 ~~(6)~~~~(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 *educational institution* [institution of higher education] shall obtain ownership of the distributions made from the participant's account for the *qualified educational expenses*~~[higher education costs]~~ paid to the institution at the time each payment is made to the institution;~~
- ~~(4)~~~~(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;
- ~~(5)~~~~(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;
- ~~(6)~~~~(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 *qualified educational expenses* ~~higher education costs~~, the board may 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

~~(7)(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 6. KRS 164A.370 is amended to read as follows:

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky or any of its political subdivisions. Investment income earned on contributions paid by any participant and used for *qualified educational expenses* ~~higher education costs~~ defined in *subsection (13) of Section 1 of this Act* ~~KRS 164A.305(6)~~ or refunded under KRS 164A.350 ~~((8)(a) or (b))~~ shall not be subject to Kentucky income tax by either a participant or any beneficiary of a participation agreement, the purposes for which the investment income was accrued being deemed and declared to be entirely public in nature. Earnings that are not used for *qualified educational expenses* ~~higher education costs~~ as defined in *subsection (13) of Section 1 of this Act* ~~KRS 164A.305(6)~~ and are refunded shall be subject to Kentucky income tax, except for earnings refunded pursuant to KRS 164A.350 ~~((8)(a) or (b))~~.

➔ Section 7. The following KRS section is repealed:

164A.360 Borrowing from the trust.

Signed by Governor April 10, 2018.