

1 AN ACT relating to opportunities in education.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
4 READ AS FOLLOWS:

5 *There is hereby established the Education Opportunity Account Program, also known*
6 *as the EOA program. The purpose of the EOA program is to give more flexibility and*
7 *choices in education to Kentucky residents and to address disparities in educational*
8 *options available to students.*

9 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
10 READ AS FOLLOWS:

11 *(1) As used in Sections 1 to 15 of this Act:*

12 *(a) "Account-granting organization" or "AGO" means a nonprofit*
13 *organization that complies with the requirements of Sections 1 to 15 of this*
14 *Act, receives contributions to fund EOAs, and administers and allocates*
15 *funds to EOAs;*

16 *(b) "Contribution" means a donation in the form of cash or marketable*
17 *securities that is eligible for the tax credit permitted by Section 12 of this*
18 *Act;*

19 *(c) "Curriculum" means a complete course of study for a particular content*
20 *area or grade level;*

21 *(d) "Education opportunity account" or "EOA" means the account to which*
22 *funds are allocated by an AGO to the parent of an EOA student in order to*
23 *pay for expenses to educate the EOA student pursuant to the requirements*
24 *of Sections 1 to 15 of this Act;*

25 *(e) "Education service provider" means a person or organization that receives*
26 *payments from EOA to provide educational materials and services to EOA*
27 *students;*

1 (f) "Eligible student" means a resident of Kentucky who:

- 2 1. Is a member of a household with an annual household income at the
 3 time of initially applying for an EOA from an AGO under this section
 4 of not more than two hundred percent (200%) of the amount of
 5 household income necessary to establish eligibility for reduced-price
 6 meals based on size of household as determined annually by the
 7 United States Department of Agriculture applicable to the
 8 Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789;
 9 2. Has previously received an EOA from an AGO under this section; or
 10 3. Is a member of the household of an eligible student that currently has
 11 an EOA from an AGO under this section;

12 (g) "Eligible taxpayer" means an individual or business, including but not
 13 limited to a corporation, S corporation, partnership, limited liability
 14 company, or sole proprietorship subject to tax imposed under KRS 141.020,
 15 141.040, or 141.0401;

16 (h) "EOA student" means an eligible student who is participating in the EOA
 17 program;

18 (i) "Income" has the same meaning as in the United States Department of
 19 Agriculture, Food and Nutrition Service, Child Nutrition Programs, Income
 20 Eligibility Guidelines, Federal Register Vol. 83, No. 89, published May 8,
 21 2018, and as updated annually as authorized by 42 U.S.C. sec.
 22 1758(b)(1)(A); and

23 (j) "Parent" means a biological or adoptive parent, legal guardian, custodian,
 24 or other person with legal authority to act on behalf of an EOA student.

25 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) Each AGO shall create a uniform process for determining the amount allocated

1 to each eligible student's EOA with the following limitations:

2 (a) For eligible students that intend to use the funds in the EOA to pay tuition
3 at a nonpublic school or at a public school outside of their assigned district
4 public school system, the EOA funds shall not exceed the lesser of:

5 1. Their parents' demonstrated financial need as determined by an
6 independent financial analysis performed by an organization that is:

7 a. Experienced in evaluating a student's need for financial aid; and

8 b. Included on the department's list of approved organizations as
9 required by subsection (2)(a) of Section 8 of this Act; or

10 2. The actual amount of tuition and required fees charged by the school
11 to students who do not receive assistance under this program;

12 (b) For all other eligible students, the EOA funds shall not exceed the lesser of:

13 1. The expected cost of educational services to be provided during the
14 succeeding school year; or

15 2. The Commonwealth's guaranteed SEEK base amount for the
16 immediately preceding school year reduced by the percentage equal to
17 one-fourth (1/4) of the percentage by which the applicant's household
18 income exceeds the applicable federal reduced lunch household
19 income threshold; and

20 (c) For students in the foster care system, the AGO shall assume that the
21 student's parents have no income or ability to pay for educational services
22 for the purposes of prioritizing the students and determining the amount of
23 assistance provided under this program.

24 (2) The funds in an EOA shall not be used for athletics or any associated fees and
25 shall only be used to pay for the following qualifying expenses if covered by the
26 AGO and incurred for the purpose of educating an EOA student:

27 (a) Tuition or fees to attend a prekindergarten to grade twelve (12) public or

- 1 *nonpublic school located in Kentucky;*
- 2 *(b) Tuition or fees for online learning programs;*
- 3 *(c) Tutoring services provided by an individual or a tutoring facility;*
- 4 *(d) Services contracted for and provided by a public school, including but not*
- 5 *limited to individual classes and extracurricular activities and programs;*
- 6 *(e) Textbooks, curriculum, or other instructional materials, including but not*
- 7 *limited to any supplemental materials or associated online instruction*
- 8 *required by either a curriculum or an education service provider;*
- 9 *(f) Computer hardware or other technological devices that are primarily used*
- 10 *to help meet an EOA student's educational needs;*
- 11 *(g) Educational software and applications;*
- 12 *(h) School uniforms;*
- 13 *(i) Fees for nationally standardized assessments, advanced placement*
- 14 *examinations, examinations related to college or university admission, and*
- 15 *tuition or fees for preparatory courses for these;*
- 16 *(j) Tuition or fees for summer education programs and specialized after-school*
- 17 *education programs, excluding after-school childcare;*
- 18 *(k) Tuition, fees, instructional materials, and examination fees at a career or*
- 19 *technical school;*
- 20 *(l) Educational services and therapies, including but not limited to*
- 21 *occupational, behavioral, physical, speech-language, and audiology*
- 22 *therapies provided by a licensed professional;*
- 23 *(m) Tuition and fees at an institution of higher education for dual credit*
- 24 *courses; and*
- 25 *(n) Fees for transportation paid to a fee-for-service transportation provider for*
- 26 *the student to travel to and from an education service provider.*
- 27 *(3) EOA funds shall not be refunded, rebated, or shared with a parent or EOA*

1 student in any manner. Any refund or rebate for materials or services purchased
2 with EOA funds shall be credited directly to the student's EOA.

3 (4) Parents may make payments for the costs of educational materials and services
4 not covered by the funds in their student's EOA, but personal deposits into an
5 EOA shall not be permitted.

6 (5) Funds allocated to an EOA shall not constitute taxable income to the parent or
7 the EOA student.

8 (6) (a) An EOA shall remain in force, unless the EOA is closed because of a
9 substantial misuse of funds, and any unused funds shall roll over from
10 quarter to quarter and from year to year until:

11 1. The parent withdraws the EOA student from the EOA program;

12 2. The EOA student receives a high school diploma or equivalency
13 certificate; or

14 3. The end of the school year in which the student reaches twenty-one
15 (21) years of age;

16 whichever occurs first.

17 (b) When an EOA is closed, any unused funds shall revert to the AGO that
18 granted the EOA and be allocated by that AGO to fund other EOAs. If the
19 AGO that granted the EOA is no longer operating, the funds shall be
20 transferred to another AGO operating in good standing with the
21 Commonwealth.

22 (7) The AGO shall first prioritize funding EOAs for students, their siblings, and
23 foster children living in the same household who received an EOA in the
24 previous academic year and then to first-time applicants in accordance with
25 subsection (8) of this section.

26 (8) For first-time applicants, an AGO shall prioritize awarding EOAs to the
27 applicants as follows:

1 (a) A majority of funds available for first-time applicants shall be reserved for
2 students whose household income does not exceed that necessary to
3 establish eligibility for reduced-price meals based on size of household as
4 determined annually by the United States Department of Agriculture
5 applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789.
6 Within in this group of applicants, the funds shall be further prioritized to
7 fund EOAs in the order of the applicants with the most demonstrated
8 financial need; and

9 (b) The remaining unfunded first-time applicants shall be selected for funding
10 based on a random lottery until all remaining funds are allocated to EOAs.

11 (9) An AGO may define and limit the services that the EOA funds may cover.

12 (10) An AGO shall not accept a contribution from an eligible taxpayer if the eligible
13 taxpayer designates that the contribution shall be used to award an EOA to a
14 particular student.

15 (11) Dependents of the AGO's board of directors, its staff, and its donors are ineligible
16 to receive an EOA.

17 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
18 READ AS FOLLOWS:

19 (1) To establish an EOA for an eligible student, the parent shall submit an
20 application to the AGO.

21 (2) The AGO shall approve an application for an EOA if:

22 (a) The AGO verifies that the student on whose behalf the parent is applying is
23 an eligible student;

24 (b) Funds are available for the EOA; and

25 (c) The parent signs an agreement with the AGO:

26 1. To use the funds in the EOA only for the covered qualifying expenses;

27 2. Not to establish any other EOA for the eligible student with any other

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AGO;

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3. To comply with the rules and requirements of the EOA program; and

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4. Not to use EOA funds to cover the cost of educational materials or

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services if they are currently receiving the same types of materials or

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services through their assigned public school district.

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(3) The AGO shall annually renew a student's EOA if funds are available unless the

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student's family income has increased above two hundred fifty percent (250%) of

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the amount of household income necessary to establish eligibility for reduced-

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price meals based on size of household as determined annually by the United

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States Department of Agriculture applicable to the Commonwealth, pursuant to

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42 U.S.C. secs. 1751 to 1789;

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(4) In the event that an eligible student becomes ineligible for reasons other than

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fraud or misuse of funds, the AGO may cease funding for the student's EOA

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provided that:

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(a) The AGO immediately suspends payment of additional funds into the

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student's EOA. For EOAs that have been open for at least one (1) full

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school year, the EOA shall remain open and active for the parent to make

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qualifying expenditures to educate the student from funds remaining in the

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EOA. When no funds remain in the student's EOA, the AGO may close the

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EOA;

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(b) If a parent reapplies to the AGO and signs a new written agreement,

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payments into the student's existing EOA may resume if the EOA is still

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open and active. A new EOA may be established if the student's EOA was

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closed; and

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(c) An AGO shall adopt policies to provide the least disruptive process possible

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for EOA students desiring to leave the EOA program.

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➔SECTION 5. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO

1 READ AS FOLLOWS:

- 2 (1) Prior to making a contribution to an AGO, the taxpayer or an AGO acting on
3 behalf of the taxpayer shall apply to the department for preapproval of the tax
4 credit permitted by Section 12 of this Act in a manner prescribed by the
5 department. Each application shall be submitted separately and shall provide the
6 total amount of proposed contributions and the year or years in which the
7 contributions will be made, whether the proposed contributions will be in the
8 form of cash or marketable securities, and the name of the AGO to which the
9 contributions will be made.
- 10 (2) Subject to the annual tax credit cap established by Section 12 of this Act, the
11 department shall preliminarily approve the amount of tax credit within ten (10)
12 business days of receipt of the application and shall notify the taxpayer and the
13 AGO. The notification shall include the amount of the tax credit preliminarily
14 approved, the name of the AGO to which contributions may be made, and any
15 other information the department deems necessary.
- 16 (3) If a taxpayer applies or the AGO applies on behalf of the taxpayer for
17 preapproval when no amount of tax credit remains for allocation, but a portion
18 of the total amount of tax credit available is pending verification, the department
19 shall notify the taxpayer and the AGO that the application is being held in
20 abeyance and will be funded on a first-come, first-served basis or will be denied if
21 all preapproved contributions are timely made.
- 22 (4) (a) The taxpayer shall make the preapproved contribution to the AGO no later
23 than the earlier of:
- 24 1. Fifteen (15) business days following the date of the department's
25 preapproval notice, excluding weekends and holidays; or
- 26 2. June 30 of the fiscal year of the preapproval.
- 27 (b) If the preapproved contribution is in the form of marketable securities, the

1 AGO shall monetize the securities within five (5) business days of receipt,
 2 excluding weekends and holidays, and notify the department within ten (10)
 3 business days of the monetization of the securities. If the monetized value of
 4 the marketable securities is less than the amount of the proposed
 5 contribution reflected on the application, the taxpayer shall supplement the
 6 contribution with additional cash to equal the amount of contribution
 7 reflected on the application. The taxpayer shall not receive preapproval for
 8 a tax credit in excess of the amount of proposed contribution reflected on
 9 the application form.

10 (5) (a) The AGO shall certify to the department the name of the taxpayer, amount
 11 of the contribution made, and the date on which the contribution was made
 12 within ten (10) days of when the contribution has been made.

13 (b) Upon receipt of certification that the contribution has been made or the
 14 expiration of the ten (10) day period without certification, whichever occurs
 15 first, the department shall modify the amount of credit pending
 16 certification, the amount of credit allocated to taxpayers, and the remaining
 17 credit available for allocation, as applicable.

18 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) An organization that seeks to become an AGO shall apply for initial certification
 21 or renewal of certification from the department.

22 (2) An application for initial certification as an AGO shall include:

23 (a) A copy of the AGO's incorporation documents;

24 (b) A copy of the AGO's Internal Revenue Service determination letter as a
 25 Section 501(c)(3) not-for-profit organization;

26 (c) A description of the methodology the AGO will use to evaluate whether a
 27 student is eligible to establish an EOA;

- 1 (d) A description of the application process the AGO will use for parents and
2 eligible students;
- 3 (e) A description of the methodology the AGO will use to establish, fund, and
4 manage EOAs;
- 5 (f) A description of the process the AGO will use to approve education service
6 providers;
- 7 (g) A description of how the AGO will inform parents of approved education
8 service providers; and
- 9 (h) A description of the AGO's procedures for crediting refunds from an
10 education service provider back to a student's EOA;
- 11 (3) An application for renewal of certification as an AGO shall include:
- 12 (a) The AGO's completed Internal Revenue Service Form 990, submitted no
13 later than November 30 of the year before the academic year that the AGO
14 intends to fund EOAs;
- 15 (b) A copy of any audit that may be required by the department; and
- 16 (c) 1. An annual report that includes:
- 17 a. The number of applications the AGO received during the
18 previous academic year, by county and by grade level;
- 19 b. The name and address of all students that received EOA funds
20 from the AGO during the previous academic year;
- 21 c. The total number of EOAs the AGO maintains;
- 22 d. The amount of funds the AGO:
- 23 i.. Received to fund EOAs during the last fiscal year;
- 24 ii. Distributed into EOAs during the last fiscal year;
- 25 iii. Has remaining after the distribution into EOAs and any
26 obligations to fund EOAs in the future;
- 27 iv. Spent on administrative expenses and an accounting

- 1 thereof during the last fiscal year; and
- 2 v. Spent on fees to private financial management firms or
- 3 other organizations to maintain records and process
- 4 transactions of the EOAs;
- 5 e. A list of the AGO's approved education service providers; and
- 6 f. A description of how the AGO has complied with the operational
- 7 requirements and responsibilities of Sections 1 to 15 of this Act.
- 8 2. The annual report shall also:
- 9 a. Comply with uniform financial accounting standards;
- 10 b. Be attested to by an independent certified public accountant in
- 11 accordance with procedures promulgated by the department; and
- 12 c. Be free of material misstatements or exceptions.

13 (4) The department shall only certify an AGO or renew an AGO's certification if the

14 organization meets the requirements established by Sections 1 to 15 of this Act.

15 The department shall issue initial certifications within sixty (60) days of receiving

16 the application and renew certifications within thirty (30) days of receiving the

17 application.

18 (5) Upon application for renewal, an AGO shall demonstrate that it includes two (2)

19 or more education service providers in its EOA program and has awarded at least

20 fifty (50) EOAs aggregating a minimum of two hundred thousand dollars

21 (\$200,000) in the previous year and is expected to award at least fifty (50) EOAs

22 aggregating a minimum of two hundred thousand dollars (\$200,000) in the

23 succeeding year.

24 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO

25 READ AS FOLLOWS:

26 (1) An AGO shall ensure that at least ninety percent (90%) of the total annual

27 contributions received are allocated to EOAs no later than the last day of the

- 1 AGO's immediately succeeding calendar year or fiscal year, as applicable, unless
2 the current year's total annual contributions received by the AGO exceed an
3 amount equal to the average of the total annual contributions received in the
4 immediately preceding three (3) years by more than fifteen percent (15%), in
5 which case the excess amount may be carried forward and expended for EOAs in
6 three (3) equal installments over the immediately succeeding three (3) years.
- 7 (2) An AGO shall maintain separate accounts for EOA funds and operating funds.
- 8 (3) Any interest that accrues from contributions that are eligible for the tax credit
9 permitted by Section 12 of this Act shall be allocated by the AGO to fund EOAs.
- 10 (4) An AGO shall create a standard application process for parents to establish their
11 student's eligibility for an EOA. An AGO shall ensure that the application is
12 readily available to interested families and may be submitted through various
13 sources, including the Internet.
- 14 (5) An AGO shall provide parents with a written explanation of the allowable uses of
15 EOA funds, the responsibilities of parents, and the duties of the AGO and the role
16 of any private financial management firms or other organizations that the AGO
17 may contract with to process EOA transactions or maintain records for other
18 aspects of the EOA program.
- 19 (6) (a) An AGO may transfer funds to another AGO if additional funds are
20 required to meet EOA demands at the receiving AGO or if the transferring
21 AGO determines it cannot continue to operate due to any reason.
- 22 (b) If funds are transferred for the purpose of meeting EOA demands, no more
23 than a combined aggregate of ten percent (10%) of the AGOs' total annual
24 contributions received may be retained by the AGOs for administrative
25 expenses.
- 26 (c) All transferred funds shall be allocated by the receiving AGO to its account
27 for EOAs.

1 (d) All transferred amounts received by an AGO shall be separately disclosed in
 2 the receiving AGO's annual report for certification renewal pursuant to
 3 Section 6 of this Act.

4 (e) An AGO that receives a transfer of funds from an AGO that has determined
 5 it will not continue to operate shall agree to fund the EOAs established by
 6 the transferring AGO to the extent funds are available. The receiving AGO
 7 shall also prioritize the funding of transferred EOAs before funding new
 8 EOA applicants.

9 (7) An AGO may accept donations that are not eligible for the tax credit permitted by
 10 Section 12 of this Act, gifts, and grants to cover administrative costs, to inform
 11 the public about the EOA program, to fund additional EOAs or to offer
 12 assistance outside of the EOA program. Donations that are not eligible for the tax
 13 credit permitted by Section 12 of this Act shall not be subject to Sections 1 to 15
 14 of this Act.

15 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) To administer the tax credit and the total annual tax credit cap established in
 18 Section 12 of this Act, the department shall:

19 (a) Create the tax credit application form, the forms to be used by the
 20 department to notify the taxpayer and the AGO of preapproval or denial of
 21 the credit, and the educational materials to be distributed by the AGO;

22 (b) Create a Web site listing the amount of the total credit pending verification,
 23 the amount of the total credit allocated to date, and the remaining credit
 24 available to taxpayers making contributions to AGOs;

25 (c) Notify the taxpayer and the AGO of the amount of credit allocated to the
 26 taxpayer upon certification that the contribution has been made by the
 27 issuance of a tax credit allocation letter, which the taxpayer shall submit

1 with the taxpayer's return when claiming the credit; and
 2 (d) Collect necessary data to provide the report required by subsection (3) of
 3 this section.

4 (2) On or before January 1 of each year, the department shall publish on its Web
 5 site:

6 (a) A list of organizations that have been approved by the department to
 7 perform independent financial analyses of parents' demonstrated financial
 8 needs; and

9 (b) A list of AGOs.
 10 1. If an AGO fails to meet the requirements of this section, the
 11 department shall not include the organization on the list of AGOs the
 12 following calendar year.

13 2. Only contributions to AGOs on the list maintained by the department
 14 for each calendar year shall be recognized for tax credits awarded
 15 under Section 12 of this Act.

16 (3) The department shall produce and publish on its Web site an annual report that
 17 aggregates the data obtained from the annual reports submitted by AGOs for the
 18 renewal of their certification pursuant to Section 6 of this Act. The department's
 19 report shall not include the identifying information of EOA students in
 20 accordance with subsection (1) of Section 17 of this Act.

21 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 22 READ AS FOLLOWS:

23 (1) The department may conduct an audit of an AGO or contract for the auditing of
 24 an AGO.

25 (2) (a) In the event that the department determines that there has been a violation
 26 of Sections 1 to 15 of this Act by an AGO, the department shall send written
 27 notice to the AGO.

1 **(b) The AGO that receives written notice of a violation will have sixty (60) days**
2 **from receipt of notice to correct the violation identified by the department.**

3 **(c) If the AGO fails or refuses to comply after sixty (60) days, the department**
4 **may revoke the AGO's certification to participate in the EOA program.**

5 **(3) An AGO whose certificate has been revoked under this section:**

6 **(a) May appeal the revocation of its certification to the Kentucky Claims**
7 **Commission pursuant to KRS 49.220;**

8 **(b) Shall continue administering EOAs that were donated prior to the date of**
9 **notice stated on the revocation;**

10 **(c) Shall not accept any further contributions for the purpose of funding EOAs**
11 **on or after the date of notice stated on the revocation; and**

12 **(d) Shall refund any contributions that were received for the purpose of**
13 **funding EOAs on or after the date of notice stated on the revocation.**

14 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
15 READ AS FOLLOWS:

16 **(1) (a) Each AGO shall implement a commercially viable, cost-effective, and**
17 **parent-friendly system for payment of services from EOAs to education**
18 **service providers.**

19 **(b) The AGO shall not adopt a system that relies exclusively on requiring**
20 **parents to be reimbursed for out-of-pocket expenses, but shall provide**
21 **maximum flexibility to parents by facilitating direct payments to education**
22 **service providers or requests for preapproval of and reimbursements for**
23 **qualifying expenses.**

24 **(c) An AGO may contract with private financial management firms or other**
25 **organizations to develop the payment system.**

26 **(2) An AGO may contract with private financial management firms or other**
27 **organizations to maintain records and process transactions of the EOAs.**

1 (3) If funding is available, an AGO shall continue making payments into an EOA
 2 until:

3 (a) The parent does not renew the EOA;

4 (b) The AGO determines that the EOA student's family income has increased
 5 above two hundred fifty percent (250%) of the amount of household income
 6 necessary to establish eligibility for reduced-price meals based on size of
 7 household as determined annually by the United States Department of
 8 Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs.
 9 1751 to 1789;

10 (c) The AGO determines that there was substantial misuse of the funds in the
 11 EOA; or

12 (d) The EOA student receives a high school diploma or equivalency certificate.

13 (4) Each AGO shall establish a process for approving education service providers.

14 (5) An AGO may approve education service providers on their own initiative, at the
 15 request of parents, or upon request from prospective education service providers.

16 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 17 READ AS FOLLOWS:

18 (1) Nothing in Sections 1 to 15 of this Act shall be deemed to limit the independence
 19 or autonomy of an education service provider or to make the actions of an
 20 education service provider the actions of the state government.

21 (2) Nothing in Sections 1 to 15 of this Act shall be construed to expand the
 22 regulatory authority of the state, its officers, or any county school district to
 23 impose any additional regulation of education service providers beyond those
 24 necessary to enforce the requirements of the EOA Program.

25 (3) An education service provider that accepts payment from an EOA pursuant to
 26 Sections 1 to 15 of this Act is not an agent of the state or federal government.

27 (4) An education service provider shall not be required to alter its creed, practices,

1 admissions policy, or curriculum in order to accept payments from an EOA.

2 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) (a) Effective for taxable years beginning on or after January 1, 2021, a
5 nonrefundable, nontransferable tax credit shall be permitted against the tax
6 imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of
7 credit as provided in Section 16 of this Act, as applicable, for contributions
8 made during a taxable year to one (1) or more AGOs in accordance with the
9 EOA program. To qualify for this credit, a taxpayer filing as an individual
10 shall elect to claim a federal and Kentucky contribution deduction
11 associated with the contributions made to an AGO that does not exceed an
12 amount equal to the total contribution for the taxable year less the amount
13 of credit allowed by this section for the taxable year.

14 (b) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit
15 against the limited liability entity tax imposed by KRS 141.0401, and shall
16 also pass the credit through to its members, partners, or shareholders in the
17 same proportion as the distributive share of income or loss is passed
18 through.

19 (2) The aggregate value of the total annual tax credit cap awarded shall be
20 determined as follows:

21 (a) For fiscal year July 1, 2021, through June 30, 2022, the total annual tax
22 credit cap awarded shall not exceed twenty-five million dollars
23 (\$25,000,000); and

24 (b) In each subsequent fiscal year:

25 1. If the aggregate value of all credits awarded during the immediately
26 preceding fiscal year equals at least ninety percent (90%) of the
27 annual credit cap available for that year, the annual credit cap for the

1 current fiscal year shall be increased by twenty-five percent (25%)
2 over the credit cap amount established for the immediately preceding
3 fiscal year; or

4 2. If the aggregate value of all credits awarded during the immediately
5 preceding fiscal year does not equal at least ninety percent (90%) of
6 the annual credit cap available for that fiscal year, the annual credit
7 cap shall remain at the same level as the annual credit cap for the
8 immediately preceding fiscal year.

9 (3) The credit amount awarded per taxpayer per taxable year shall be no more than
10 the lesser of:

11 (a) Ninety-five percent (95%) of the total contributions made to an AGO, except
12 as provided in subsection (4) of this section; or

13 (b) One million dollars (\$1,000,000).

14 (4) (a) The taxpayer may elect to pledge a contribution for multiple taxable years,
15 not to exceed a total of four (4) taxable years.

16 (b) If the multi-year pledge is made by the taxpayer and the amount of the
17 contributions for each of the multiple taxable years is equal to or more than
18 the amount of contributions made to the AGO in the taxable year within
19 which the pledge is made, the amount of allowable credit shall be increased
20 by two (2) percentage points to ninety-seven percent (97%) in the taxable
21 year within which the pledge is made and for each pledged year.

22 (c) If the taxpayer does not remit the pledged amount of contributions during
23 any taxable year for which a multi-year pledge is made, the taxpayer shall
24 repay the portion of the credit resulting from the increase allowed by this
25 subsection.

26 (5) Any tax credit awarded under this section that is not used by the taxpayer in the
27 current taxable year may be carried forward for up to five (5) succeeding taxable

1 years until the tax credit has been utilized.

2 (6) Tax credits under this section shall be awarded on a first-come, first-served basis
3 each fiscal year within the limitations set forth in this section. The date and time
4 stamp from each application for preapproval shall establish the order in which
5 the application was received. For contributions pledged for multiple tax years, the
6 contribution shall be considered the first in line for the years subsequent to the
7 initial year of the pledge.

8 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) The department shall provide the following information to the Interim Joint
11 Committee on Appropriations and Revenue no later than November 1, 2022, and
12 no later than November 1 of each year thereafter as long as the tax credit
13 permitted by Section 12 of this Act is taken:

14 (a) All information contained in each annual report filed by an AGO as
15 required by Section 6 of this Act and the administrative regulations
16 promulgated thereunder, with each eligible student's identifying
17 information removed and replaced with an assigned unique identification
18 number;

19 (b) The number and total amount of EOAs awarded by AGOs to EOA students
20 reported by household income range intervals of five thousand dollars
21 (\$5,000);

22 (c) The number and total amount of EOAs awarded by AGOs to EOA students;
23 1. Who are currently in the Commonwealth's foster care program;
24 2. Who have previously received an EOA under this section; and
25 3. Who are members of a household in which a student has previously
26 received an EOA under this section; and

27 (d) Any other information that may be necessary to assist the members of the

1 *General Assembly in determining that the purposes of this tax credit are*
2 *being fulfilled.*

3 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
4 READ AS FOLLOWS:

5 *If any part of Sections 1 to 15 of this Act is challenged in state court as violating either*
6 *the state or federal constitutions, parents of students who would meet the criteria for*
7 *being eligible students as defined by Section 2 of this Act shall be permitted to*
8 *intervene as of right in such lawsuit for the purposes of defending the EOA program's*
9 *constitutionality.*

10 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
11 READ AS FOLLOWS:

12 *Sections 1 to 15 of this Act may be cited as the "Education Opportunity Account Act"*
13 *or "EOA Act."*

14 ➔Section 16. KRS 141.0205 is amended to read as follows:

15 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax
16 imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of
17 the credits shall be determined as follows:

18 (1) The nonrefundable business incentive credits against the tax imposed by KRS
19 141.020 shall be taken in the following order:

- 20 (a) The limited liability entity tax credit permitted by KRS 141.0401;
- 21 (b) The economic development credits computed under KRS 141.347, 141.381,
22 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
23 207, and 154.12-2088;
- 24 (c) The qualified farming operation credit permitted by KRS 141.412;
- 25 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 26 (e) The health insurance credit permitted by KRS 141.062;
- 27 (f) The tax paid to other states credit permitted by KRS 141.070;

- 1 (g) The credit for hiring the unemployed permitted by KRS 141.065;
- 2 (h) The recycling or composting equipment credit permitted by KRS 141.390;
- 3 (i) The tax credit for cash contributions in investment funds permitted by KRS
- 4 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 5 154.20-258;
- 6 (j) The research facilities credit permitted by KRS 141.395;
- 7 (k) The employer High School Equivalency Diploma program incentive credit
- 8 permitted under KRS 151B.402;
- 9 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 10 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 11 (n) The clean coal incentive credit permitted by KRS 141.428;
- 12 (o) The ethanol credit permitted by KRS 141.4242;
- 13 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 14 (q) The energy efficiency credits permitted by KRS 141.436;
- 15 (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 16 (s) The Endow Kentucky credit permitted by KRS 141.438;
- 17 (t) The New Markets Development Program credit permitted by KRS 141.434;
- 18 (u) The distilled spirits credit permitted by KRS 141.389;
- 19 (v) The angel investor credit permitted by KRS 141.396;
- 20 (w) The film industry credit permitted by KRS 141.383 for applications approved
- 21 on or after April 27, 2018;
- 22 (x) The inventory credit permitted by KRS 141.408; and
- 23 (y) The renewable chemical production credit permitted by KRS 141.4231.
- 24 (2) After the application of the nonrefundable credits in subsection (1) of this section,
- 25 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
- 26 shall be taken in the following order:
- 27 (a) The individual credits permitted by KRS 141.020(3);

- 1 (b) The credit permitted by KRS 141.066;
- 2 (c) The tuition credit permitted by KRS 141.069;
- 3 (d) The household and dependent care credit permitted by KRS 141.067;~~and~~
- 4 (e) The income gap credit permitted by KRS 141.066; and
- 5 (f) The Education Opportunity Account Program tax credit permitted by
- 6 Section 12 of this Act.
- 7 (3) After the application of the nonrefundable credits provided for in subsection (2) of
- 8 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
- 9 taken in the following order:
- 10 (a) The individual withholding tax credit permitted by KRS 141.350;
- 11 (b) The individual estimated tax payment credit permitted by KRS 141.305;
- 12 (c) The certified rehabilitation credit permitted by KRS 171.3961 and
- 13 171.397(1)(b); and
- 14 (d) The film industry tax credit permitted by KRS 141.383 for applications
- 15 approved prior to April 27, 2018.
- 16 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the
- 17 tax imposed by KRS 141.040.
- 18 (5) The following nonrefundable credits shall be applied against the sum of the tax
- 19 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)
- 20 of this section, and the tax imposed by KRS 141.0401 in the following order:
- 21 (a) The economic development credits computed under KRS 141.347, 141.381,
- 22 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
- 23 207, and 154.12-2088;
- 24 (b) The qualified farming operation credit permitted by KRS 141.412;
- 25 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 26 (d) The health insurance credit permitted by KRS 141.062;
- 27 (e) The unemployment credit permitted by KRS 141.065;

- 1 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 2 (g) The coal conversion credit permitted by KRS 141.041;
- 3 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
4 ending prior to January 1, 2008;
- 5 (i) The tax credit for cash contributions to investment funds permitted by KRS
6 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
7 154.20-258;
- 8 (j) The research facilities credit permitted by KRS 141.395;
- 9 (k) The employer High School Equivalency Diploma program incentive credit
10 permitted by KRS 151B.402;
- 11 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 12 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 13 (n) The clean coal incentive credit permitted by KRS 141.428;
- 14 (o) The ethanol credit permitted by KRS 141.4242;
- 15 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 16 (q) The energy efficiency credits permitted by KRS 141.436;
- 17 (r) The ENERGY STAR home or ENERGY STAR manufactured home credit
18 permitted by KRS 141.437;
- 19 (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 20 (t) The railroad expansion credit permitted by KRS 141.386;
- 21 (u) The Endow Kentucky credit permitted by KRS 141.438;
- 22 (v) The New Markets Development Program credit permitted by KRS 141.434;
- 23 (w) The distilled spirits credit permitted by KRS 141.389;
- 24 (x) The film industry credit permitted by KRS 141.383 for applications approved
25 on or after April 27, 2018;
- 26 (y) The inventory credit permitted by KRS 141.408; ~~and~~
- 27 (z) The renewable chemical production tax credit permitted by KRS 141.4231;

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and

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(aa) The Education Opportunity Account Program tax credit permitted by

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Section 12 of this Act.

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(6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:

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(a) The corporation estimated tax payment credit permitted by KRS 141.044;

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(b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and

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(c) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018.

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➔Section 17. KRS 131.190 is amended to read as follows:

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(1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

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(2) The prohibition established by subsection (1) of this section shall not extend to:

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(a) Information required in prosecutions for making false reports or returns of

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property for taxation, or any other infraction of the tax laws;

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(b) Any matter properly entered upon any assessment record, or in any way made

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a matter of public record;

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(c) Furnishing any taxpayer or his properly authorized agent with information

- 1 respecting his own return;
- 2 (d) Testimony provided by the commissioner or any employee of the department
3 in any court, or the introduction as evidence of returns or reports filed with the
4 department, in an action for violation of state or federal tax laws or in any
5 action challenging state or federal tax laws;
- 6 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
7 energy resources assessed under KRS 132.820, or owners of surface land
8 under which the unmined minerals lie, factual information about the owner's
9 property derived from third-party returns filed for that owner's property, under
10 the provisions of KRS 132.820, that is used to determine the owner's
11 assessment. This information shall be provided to the owner on a confidential
12 basis, and the owner shall be subject to the penalties provided in KRS
13 131.990(2). The third-party filer shall be given prior notice of any disclosure
14 of information to the owner that was provided by the third-party filer;
- 15 (f) Providing to a third-party purchaser pursuant to an order entered in a
16 foreclosure action filed in a court of competent jurisdiction, factual
17 information related to the owner or lessee of coal, oil, gas reserves, or any
18 other mineral resources assessed under KRS 132.820. The department may
19 promulgate an administrative regulation establishing a fee schedule for the
20 provision of the information described in this paragraph. Any fee imposed
21 shall not exceed the greater of the actual cost of providing the information or
22 ten dollars (\$10);
- 23 (g) Providing information to a licensing agency, the Transportation Cabinet, or
24 the Kentucky Supreme Court under KRS 131.1817;
- 25 (h) Statistics of gasoline and special fuels gallonage reported to the department
26 under KRS 138.210 to 138.448;
- 27 (i) Providing any utility gross receipts license tax return information that is

1 necessary to administer the provisions of KRS 160.613 to 160.617 to
 2 applicable school districts on a confidential basis;

3 (j) Providing documents, data, or other information to a third party pursuant to an
 4 order issued by a court of competent jurisdiction; or

5 (k) Providing information to the Legislative Research Commission under:

6 1. KRS 139.519 for purposes of the sales and use tax refund on building
 7 materials used for disaster recovery;

8 2. KRS 141.436 for purposes of the energy efficiency products credits;

9 3. KRS 141.437 for purposes of the ENERGY STAR home and the
 10 ENERGY STAR manufactured home credits;

11 4. KRS 148.544 for purposes of the film industry incentives;

12 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
 13 tax credits and the job assessment fees;

14 6. KRS 141.068 for purposes of the Kentucky investment fund;

15 7. KRS 141.396 for purposes of the angel investor tax credit;

16 8. KRS 141.389 for purposes of the distilled spirits credit;

17 9. KRS 141.408 for purposes of the inventory credit;

18 10. KRS 141.390 for purposes of the recycling and composting credit;

19 11. KRS 141.3841 for purposes of the selling farmer tax credit;~~and~~

20 12. KRS 141.4231 for purposes of the renewable chemical production tax
 21 credit; and

22 13. Section 13 of this Act for purposes of the Education Opportunity
 23 Account Program tax credit.

24 (3) The commissioner shall make available any information for official use only and on
 25 a confidential basis to the proper officer, agency, board or commission of this state,
 26 any Kentucky county, any Kentucky city, any other state, or the federal government,
 27 under reciprocal agreements whereby the department shall receive similar or useful

1 information in return.

2 (4) Access to and inspection of information received from the Internal Revenue Service
3 is for department use only, and is restricted to tax administration purposes.
4 Information received from the Internal Revenue Service shall not be made available
5 to any other agency of state government, or any county, city, or other state, and shall
6 not be inspected intentionally and without authorization by any present secretary or
7 employee of the Finance and Administration Cabinet, commissioner or employee of
8 the department, or any other person.

9 (5) Statistics of crude oil as reported to the department~~[Department of Revenue]~~ under
10 the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural
11 gas production as reported to the department~~[Department of Revenue]~~ under the
12 natural resources severance tax requirements of KRS Chapter 143A may be made
13 public by the department by release to the Energy and Environment Cabinet,
14 Department for Natural Resources.

15 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
16 submissions for the 1989 tax year, the department may make public or divulge only
17 those portions of mine maps submitted by taxpayers to the department pursuant to
18 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
19 out parcel areas. These electronic maps shall not be relied upon to determine actual
20 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
21 required under KRS Chapters 350 and 352 shall not be construed to constitute land
22 surveying or boundary surveys as defined by KRS 322.010 and any administrative
23 regulations promulgated thereto.