

1 AN ACT relating to the Kentucky Educational Savings Plan Trust.

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

3 ➔Section 1. KRS 164A.300 is repealed, reenacted as a new section of KRS
4 Chapter 41, and amended to read as follows:

5 (1) The General Assembly of the Commonwealth of Kentucky hereby declares as a
6 legislative finding of fact that the general welfare and well-being of the
7 Commonwealth are directly related to the educational levels and skills of the
8 citizens of the Commonwealth. Therefore, a vital and valid public purpose of the
9 Commonwealth is served by the creation and implementation of programs which
10 encourage and make possible the attainment of higher education by the greatest
11 number of citizens of the Commonwealth.

12 (2) The General Assembly finds, declares, and recognizes that the Commonwealth has
13 limited resources to provide additional programs for higher education funding and
14 that the continued operation and maintenance of the institutions of higher education
15 in Kentucky and the general welfare of the citizens and the Commonwealth will be
16 enhanced by creation of a program pursuant to which citizens and others may invest
17 money in a public trust for future application to the payment of higher education
18 costs in the Commonwealth and elsewhere and that the creation of a means of
19 encouragement of citizens in the investment of funds for such future higher
20 education application represents the carrying out of a valid and vital public purpose
21 of the Commonwealth. In order to make available to the citizens of the
22 Commonwealth an opportunity to fund future higher education needs for
23 beneficiaries, it is necessary that a public trust be established in which the citizens
24 of the Commonwealth and others may invest moneys for future educational use.

25 (3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create
26 the Kentucky Educational Savings Plan Trust. The implementation and effectuation
27 of the Kentucky Educational Savings Plan Trust as provided by ***Sections 1 to 12 of***

1 this Act~~[KRS 164A.300 to 164A.380]~~ constitutes the carrying out of a valid and
 2 vital public purpose for which public funds of the Commonwealth may be
 3 expended.

4 (4) It is in the best interest of the people of the Commonwealth to establish and provide
 5 for the operation of the Kentucky Educational Savings Plan Trust in a manner
 6 conforming to federal law that allows participants and beneficiaries federal income
 7 taxation benefits on contributions and earnings on contributions expended by the
 8 trust for the higher education costs of a beneficiary.

9 ➔Section 2. KRS 164A.305 is repealed, reenacted as a new section of KRS
 10 Chapter 41, and amended to read as follows:

11 As used in Sections 1 to 12 of this Act~~[KRS 164A.300 to 164A.380]~~, except where the
 12 context clearly requires another interpretation:

13 (1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at Sections
 14 1 to 12 of this Act~~[KRS 164A.300 to 164A.380]~~;

15 (2) "Administrative fund" means the funds used to administer the Kentucky
 16 Educational Savings Plan Trust;

17 (3) "Administrator" means the Department of the Treasury;

18 (4) "Beneficiary" means:

19 (a) Any person designated at the commencement of participation by a
 20 participation agreement to benefit from payments for education costs at an
 21 educational institution;

22 (b) The new beneficiary, in the case of a change of beneficiaries pursuant to
 23 subsection (4) of Section 5 of this Act~~[KRS 164A.330(4)]~~; or

24 (c) The scholarship recipient, in the case of a participation agreement entered into
 25 as part of a scholarship program operated by a state or local government
 26 organization or an organization described in Section 501(c)(3) of the Internal
 27 Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income

1 taxation pursuant to Section 501(a) of that code;

2 ~~(5)~~~~(4)~~ "Benefits" means the payment of education costs on behalf of a beneficiary by
3 the savings plan trust during the beneficiary's attendance at an educational
4 institution;

5 ~~(6)~~~~(5)~~ "Board" means the board of directors of the Kentucky Higher Education
6 Assistance Authority;

7 ~~(7)~~~~(6)~~ "Educational institution" means an eligible educational institution under 26
8 U.S.C. sec. 529(e)(5) or an elementary or secondary public, private, or religious
9 school;

10 ~~(8)~~~~(7)~~ "Institution of higher education" means an institution as defined in Section
11 529(e)(5) of the Internal Revenue Code of 1986, as amended;

12 ~~(9)~~~~(8)~~ "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the
13 trust created pursuant to Section 3 of this Act~~[KRS 164A.310]~~;

14 ~~(10)~~~~(9)~~ "Participant" means an organization described in Section 501(c)(3) of the
15 Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal
16 income taxation pursuant to Section 501(a) of that code, an individual, firm,
17 corporation, a state or local government organization, or a legal representative of
18 any of the foregoing who has entered into a participation agreement pursuant to
19 Sections 1 to 12 of this Act~~[KRS 164A.300 to 164A.380]~~ for the advance payment
20 of educational costs on behalf of a beneficiary;

21 ~~(11)~~~~(10)~~ "Participation agreement" means an agreement between a participant and the
22 savings plan trust, pursuant to and conforming with the requirements of Sections 1
23 to 12 of this Act~~[KRS 164A.300 to 164A.380]~~;

24 ~~(12)~~~~(11)~~ "Program manager~~administrator~~" means the manager~~administrator~~ of the
25 savings plan trust appointed by the Department of the Treasury~~board~~ to
26 administer and manage the trust;

27 ~~(13)~~~~(12)~~ "Program fund" means the program fund established by Section 6 of this

1 ~~Act~~[KRS 164A.335] which shall be held as a separate fund within the savings plan
2 trust;

3 (14)[~~(13)~~] "Qualified educational expenses" means:

4 (a) With regard to higher education expenses, the costs specified in 26 U.S.C. sec.
5 529(e)(3) for attendance at an institution of higher education;

6 (b) With regard to elementary and secondary education expenses, tuition of up to
7 ten thousand dollars (\$10,000) per year in connection with enrollment or
8 attendance at an elementary or secondary public, private, or religious school;

9 (c) With regard to qualified education loan repayments, the amounts paid as
10 principal or interest on any qualified education loan, as defined in 26 U.S.C.
11 sec. 221(d), of the beneficiary or his or her sibling, not to exceed an aggregate
12 amount of ten thousand dollars (\$10,000) per person; and

13 (d) With regard to registered apprenticeship programs, expenses for fees, books,
14 supplies, and equipment for participation in an apprenticeship program
15 registered and certified with the United States Secretary of Labor;

16 (15)[~~(14)~~] "Tuition" means the quarterly or semester charges imposed to attend an
17 educational institution and required as a condition of enrollment; and

18 (16)[~~(15)~~] "Vested participation agreement" means a participation agreement which has
19 been in full force and effect during eight (8) continuous years of residency of the
20 beneficiary in the Commonwealth while participating in the savings plan trust.

21 ➔Section 3. KRS 164A.310 is repealed, reenacted as a new section of KRS
22 Chapter 41, and amended to read as follows:

23 (1) There is hereby created an instrumentality of the Commonwealth to be known as the
24 Kentucky Educational Savings Plan Trust.

25 (2) The administrator[~~board, in the capacity of trustee,~~] shall have the power and
26 authority to:

27 [~~(1) Sue and be sued;~~]

1 ~~(a)~~⁽²⁾ Make and enter into contracts necessary for the administration of the
2 savings plan trust pursuant to **Sections 1 to 12 of this Act**~~[KRS 164A.300 to~~
3 ~~164A.380];~~

4 ~~[(3) Adopt a corporate seal and to change and amend it from time to time;]~~

5 ~~(b)~~⁽⁴⁾ Invest moneys within the program fund in any investments determined
6 by the **administrator**~~[board]~~ to be appropriate, notwithstanding any other
7 statutory limitations contained in the Kentucky Revised Statutes, which are
8 specifically determined to be inapplicable to the savings plan trust;

9 ~~(c)~~⁽⁵⁾ Enter into agreements with any educational institution, the
10 Commonwealth of Kentucky, or any federal or other state agency or other
11 entity as required for the effectuation of its rights and duties pursuant to
12 **Sections 1 to 12 of this Act**~~[KRS 164A.300 to 164A.380];~~

13 ~~(d)~~⁽⁶⁾ Accept any grants, gifts, legislative appropriations, and other moneys
14 from the Commonwealth, any unit of federal, state, or local government or
15 any other person, firm, partnership, or corporation for deposit to the
16 administrative fund or the program fund, which, in the case of any
17 contributions from other than general funds of the Commonwealth, may be
18 limited in application to definite classes of beneficiaries;

19 ~~(e)~~⁽⁷⁾ Enter into participation agreements with participants;

20 ~~(f)~~⁽⁸⁾ Make payments to an educational institution pursuant to participation
21 agreements on behalf of beneficiaries;

22 ~~(g)~~⁽⁹⁾ Make refunds to participants upon the termination of participation
23 agreements pursuant to the provisions, limitations, and restrictions set forth in
24 **Sections 1 to 12 of this Act**~~[KRS 164A.300 to 164A.380];~~

25 ~~(h)~~⁽¹⁰⁾ Appoint a program **manager**~~[administrator]~~ and to determine the duties
26 of the program administrator and other staff as necessary and fix their
27 compensation within the provisions of KRS Chapter 18A;

1 ~~(i)~~⁽¹¹⁾ Delegate to the program manager~~administrator~~ general supervision
 2 and direction over the administrative function of the trust and its employees in
 3 carrying out the policies, programs, administrative regulations, and directives
 4 of the administrator~~board~~;

5 ~~(j)~~⁽¹²⁾ Make provision for the payment of costs of administration and operation
 6 of the savings plan trust; and

7 ~~(k)~~⁽¹³⁾ Carry out the duties and obligations of the savings plan trust pursuant to
 8 Sections 1 to 12 of this Act~~[KRS 164A.300 to 164A.380]~~ and to have any and
 9 all other powers as may be reasonably necessary for the effectuation of the
 10 purposes of the savings plan trust and Sections 1 to 12 of this Act~~[KRS~~
 11 ~~164A.300 to 164A.380; and]~~

12 ~~[(14) Promulgate administrative regulations to implement the provisions of KRS~~
 13 ~~164A.300 to 164A.380 consistent with the federal Internal Revenue Code and~~
 14 ~~administrative regulations issued pursuant to that code]~~

15 **(3) The board, as trustee, shall have the power and authority to:**

16 **(a) Promulgate administrative regulations to implement Sections 1 to 12 of this**
 17 **Act consistent with the Internal Revenue Code and regulations issued**
 18 **pursuant to that code;**

19 **(b) Enter into contractual agreements, including contracts for legal, actuarial,**
 20 **financial, and consulting services;**

21 **(c) Procure insurance to protect against any loss in connection with the fund's**
 22 **property, assets, or activities and to indemnify board members from any**
 23 **action or inaction as a board member;**

24 **(d) Promulgate reasonable rules and administrative regulations for the**
 25 **administration of the savings plan trust; and**

26 **(e) Adopt a corporate seal and change and amend it from time to time.**

27 ➔Section 4. KRS 164A.325 is repealed, reenacted as a new section of KRS

1 Chapter 41, and amended to read as follows:

2 In addition to effectuating and carrying out all of the powers granted by Sections 1 to 12
3 of this Act~~[KRS 164A.300 to 164A.380]~~, the administrator~~[board, as trustee,]~~ shall have
4 all powers necessary to carry out and effectuate the purposes, objectives, and provisions
5 of Sections 1 to 12 of this Act~~[KRS 164A.300 to 164A.380]~~ pertaining to the savings
6 plan trust, including, but not limited to, the power to:

- 7 (1) Engage investment advisors to assist in the investment of savings plan trust assets;
- 8 (2) Carry out studies and projections in order to advise participants regarding present
9 and estimated future education costs and levels of financial participation in the trust
10 required in order to enable participants to achieve their educational funding
11 objectives;
- 12 (3) Contract, in accordance with the provisions of KRS 45A.345 to 45A.460 under
13 KRS 45A.343, for goods and services and engage personnel as necessary, including
14 consultants, actuaries, managers, counsel, and auditors for the purpose of rendering
15 professional, managerial, and technical assistance and advice, all of which contract
16 obligations and services shall be payable from any moneys of the trust;
- 17 (4) Participate in any other way in any federal, state, or local governmental program for
18 the benefit of the savings plan trust;
- 19 (5) Promulgate, impose, and collect administrative fees and charges in connection with
20 transactions of the savings plan trust, and provide for reasonable service charges,
21 including penalties for cancellations and late payments in respect of participation
22 agreements;
- 23 (6) Procure insurance against any loss in connection with the property, assets or
24 activities of the savings plan trust; and
- 25 (7) Administer the funds of the savings plan trust~~[-];~~
- 26 ~~[(8) Procure insurance indemnifying any member of the board from personal loss or~~
27 ~~accountability arising from liability resulting from a member's action or inaction as~~

1 ~~a member of the board; and~~

2 ~~(9) Promulgate reasonable rules and regulations for the administration of the savings~~
3 ~~plan trust].~~

4 ➔Section 5. KRS 164A.330 is repealed, reenacted as a new section of KRS
5 Chapter 41, and amended to read as follows:

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

8 (1) Each participation agreement shall require a participant to agree to invest a specific
9 amount of money in the trust for a specific period of time for the benefit of a
10 specific beneficiary. Participation agreements may be amended to provide for
11 adjusted levels of contributions based upon changed circumstances or changes in
12 educational plans and may contain penalties for failure to make contributions when
13 scheduled;

14 (2) Notwithstanding the provisions of subsection (1) of this section, participants may
15 elect to enter into a lump-sum contribution participation agreement in connection
16 with which a single, lump-sum contribution is made by the participant for the
17 benefit of a beneficiary;

18 (3) Execution of a participation agreement by the trust shall not guarantee in any way
19 that educational costs will be equal to projections and estimates provided by the
20 trust or that the beneficiary named in any participation agreement will:

21 (a) Be admitted to an educational institution;

22 (b) Be allowed to continue attendance at the educational institution following
23 admission;

24 (c) Graduate from the educational institution; or

25 (d) With regard to an institute of higher education, if admitted, be determined to
26 be a resident for tuition purposes by the institution, unless the participation
27 agreement is vested;

- 1 (4) Beneficiaries may be changed as permitted by the rules and regulations of the
2 administrator~~board~~ upon written request of the participant provided, however,
3 that the substitute beneficiary shall be eligible;
- 4 (5) Participation agreements shall be freely amended throughout their terms in order to
5 enable participants to increase or decrease the level of participation, change the
6 designation of beneficiaries, and carry out similar matters;
- 7 (6) Each participation agreement shall provide that for vested participation agreements,
8 the beneficiary shall be considered a resident of the Commonwealth for tuition
9 purposes if the beneficiary enrolls in an institution of higher education in Kentucky;
- 10 (7) Each participation agreement shall provide that it may be canceled under the terms
11 and conditions, including payment of the fees and costs, set forth in the rules and
12 regulations promulgated by the administrator~~board~~;
- 13 (8) The participation agreement shall ensure that contributions made pursuant to
14 subsections (1) and (2) of this section shall not be made in real or personal property
15 other than cash and shall not exceed the anticipated education costs of the
16 beneficiary;
- 17 (9) The participation agreement shall provide that the participant and the beneficiary
18 shall not directly or indirectly or otherwise control the investment of contributions
19 or earnings on contributions;
- 20 (10) Information obtained from a participant or a beneficiary and other personally
21 identifiable records made by the trust in the administration of this chapter shall not
22 be published or be open for public inspection pursuant to KRS 61.870 to 61.884,
23 except as provided below:
- 24 (a) Upon written request, a participant or beneficiary or his legal representative
25 shall be entitled to be advised of the aggregate balance of contributions and
26 earnings for all participation agreements that designate that same beneficiary;
- 27 (b) Information may be made available to public employees in the performance of

1 their duties, but the agency receiving the information shall assure the
2 confidentiality, as provided for in this section, of all information so released;

3 (c) Statistical information derived from information and records obtained or made
4 by the trust may be published, if it in no way reveals the identity of any
5 participant or beneficiary; and

6 (d) Nothing in this section shall preclude the program manager~~[administrator]~~ or
7 any employee of the administrator~~[board]~~ from testifying or introducing as
8 evidence information or records obtained or made by the trust in any
9 proceeding under this chapter, in an action to which the trust is a party, or
10 upon order of a court.

11 ➔Section 6. KRS 164A.335 is repealed, reenacted as a new section of KRS
12 Chapter 41, and amended to read as follows:

13 The administrator~~[board, as trustee,]~~ shall segregate moneys received by the savings plan
14 trust into two (2) funds, which shall be identified as the program fund and the
15 administrative fund. Transfers may be made from the program fund to the administrative
16 fund for the purpose of paying operating costs associated with administering the trust and
17 as required by Sections 1 to 12 of this Act~~[KRS 164A.300 to 164A.380]~~. All moneys
18 credited to the administrative fund shall be deposited in accordance with KRS 41.070. All
19 moneys paid by participants in connection with participation agreements shall be
20 deposited as received into the program fund and shall be promptly invested and accounted
21 for separately. Contributions shall be accounted for separately for each beneficiary.
22 Deposits and interest thereon accumulated on behalf of participants in the program fund
23 of the savings plan trust may be used for payments to any institution of higher education.

24 ➔Section 7. KRS 164A.350 is repealed, reenacted as a new section of KRS
25 Chapter 41, and amended to read as follows:

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

27 (1) The trust shall exercise ownership of all contributions made under any participation

- 1 agreement and all interest derived from the investment of the contributions made by
2 the participant up to the date of utilization for payment of educational costs for the
3 beneficiary. All contributions made under any participant agreement and interest
4 derived from the investment of the contributions made by the participant shall be
5 deemed to be held in trust for the benefit of the beneficiary;
- 6 (2) Any participant may cancel a participation agreement at any time, and terminate the
7 trust's ownership rights thereby created in whole or in part, by delivering an
8 instrument in writing signed and delivered to the program manager~~[administrator]~~
9 or his or her designee. In the event the participation agreement is terminated in part,
10 the trust shall retain ownership of all contributions made under the participation
11 agreement not previously expended for the qualified educational expenses of the
12 beneficiary and not returned to the participant. The participant shall retain a
13 reversionary right to receive upon termination the actual market value of the
14 participant's account at the time of the cancellation, including interest, except that
15 the participant may be required to pay a penalty upon the interest that has been
16 credited to the participant's account in accordance with subsection (6) of this
17 section;
- 18 (3) The educational institution shall obtain ownership of the distributions made from
19 the participant's account for the qualified educational expenses paid to the
20 institution at the time each payment is made to the institution;
- 21 (4) Any amounts received by the trust pursuant to the Kentucky Educational Savings
22 Plan Trust which are not listed in this section shall be owned by the trust;
- 23 (5) A participant may transfer the participant's rights to another eligible participant,
24 including, but not limited to, a gift of the participant's rights to a minor beneficiary
25 pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the
26 transfer shall be effected and the property distributed in accordance with
27 administrative regulations promulgated by the administrator~~[board]~~ or the terms of

1 the participation agreement;

2 (6) Notwithstanding any other law to the contrary, if any earnings on contributions are
3 refunded due to cancellation of the participation agreement by the participant or
4 nondistribution of the funds for payment of the beneficiary's qualified educational
5 expenses, the administrator~~board~~ may charge a penalty to the participant against
6 the earnings on contributions. No penalty shall be charged when a refund is made
7 due to:

- 8 (a) The death, permanent disability, or mental incapacity of the beneficiary; or
9 (b) The beneficiary's receipt of a scholarship, an educational assistance allowance
10 under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a
11 payment exempt from income taxation by any law of the United States, other
12 than a gift, bequest, devise, or inheritance within the meaning of Section
13 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational
14 expenses, or attributable to attendance at an institution of higher education, to
15 the extent that the amount refunded does not exceed the amount of the
16 scholarship, allowance, or payment; and

17 (7) Notwithstanding any other provision of law to the contrary, contributions and
18 earnings on contributions held by the trust shall be exempt from levy of execution,
19 attachment, garnishment, distress for rent, or fee bill by a creditor of the participant
20 or the beneficiary. No interest of the participant or beneficiary in the trust shall be
21 pledged or otherwise encumbered as security for a debt.

22 ➔Section 8. KRS 164A.355 is repealed and reenacted as a new section of KRS
23 Chapter 41 to read as follows:

24 No student loan program, student grant program or other program administered by any
25 agency of the Commonwealth, except as may be otherwise provided by federal law or the
26 provisions of any specific grant applicable thereto, shall take into account and consider
27 amounts available for the payment of higher education costs pursuant to the Kentucky

1 Educational Savings Plan Trust in determining need and eligibility for student aid.

2 ➔Section 9. KRS 164A.365 is repealed, reenacted as a new section of KRS
3 Chapter 41, and amended to read as follows:

4 (1) The administrator~~board~~ shall submit an annual audited financial report, prepared
5 in accordance with generally accepted accounting principles, on the operations of
6 the savings plan trust by the first day of November to ~~the Governor,~~ the General
7 Assembly~~,~~ and the Auditor of Public Accounts. The annual audit shall be made by
8 an independent certified public accountant and shall include, but not be limited to,
9 to, direct and indirect costs attributable to the use of outside consultants,
10 independent contractors, and any other persons who are not state employees.

11 (2) The annual audit shall be supplemented by the following information prepared by
12 the administrator~~board~~:

13 (a) Any studies or evaluations prepared in the preceding year;

14 (b) A summary of the benefits provided by the trusts including the number of
15 participants and beneficiaries in the trust; and

16 (c) Any other information which is relevant in order to make a full, fair, and
17 effective disclosure of the operations of the savings plan trust and the
18 endowment trust.

19 ➔Section 10. KRS 164A.370 is repealed, reenacted as a new section of KRS
20 Chapter 41, and amended to read as follows:

21 The property of the trust and its income from operations shall be exempt from all taxation
22 by the Commonwealth of Kentucky or any of its political subdivisions. Investment
23 income earned on contributions paid by any participant and used for qualified educational
24 expenses defined in Section 2 of this Act~~[KRS 164A.305(13)]~~ or refunded under Section
25 7 of this Act~~[KRS 164A.350]~~ shall not be subject to Kentucky income tax by either a
26 participant or any beneficiary of a participation agreement, the purposes for which the
27 investment income was accrued being deemed and declared to be entirely public in

1 nature. Earnings that are not used for qualified educational expenses~~[as defined in KRS~~
 2 ~~164A.305(13)]~~ and are refunded shall be subject to Kentucky income tax, except for
 3 earnings refunded pursuant to **Section 7 of this Act**~~[KRS 164A.350].~~

4 ➔Section 11. KRS 164A.375 is repealed and reenacted as a new section of KRS
 5 Chapter 41 to read as follows:

6 The assets of the trust, including the program fund, shall at all times be preserved,
 7 invested and expended solely and only for the purposes of the trust and shall be held in
 8 trust for the participants and beneficiaries and no property rights therein shall exist in
 9 favor of the Commonwealth. The assets shall not be transferred or used by the
 10 Commonwealth for any purposes other than the purposes of the trust.

11 ➔Section 12. KRS 164A.380 is repealed, reenacted as a new section of KRS
 12 Chapter 41, and amended to read as follows:

13 **Sections 1 to 12 of this Act**~~[KRS 164A.300 to 164A.380]~~ shall be construed liberally in
 14 order to effectuate its legislative intent. The purposes of **Sections 1 to 12 of this Act**~~[KRS~~
 15 ~~164A.300 to 164A.380]~~ and all provisions of **Sections 1 to 12 of this Act**~~[KRS 164A.300~~
 16 ~~to 164A.380]~~ with respect to powers granted shall be broadly interpreted to effectuate
 17 such intent and purposes and not as to any limitation of powers.

18 ➔Section 13. KRS 164.748 is amended to read as follows:

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

20 (1) To provide loan guarantees, upon terms and conditions the board may prescribe
 21 within the limitations provided by KRS 164.740 to 164.770, and the federal act in
 22 respect of loans to eligible borrowers. The board may require additional security,
 23 including endorsers it deems necessary and desirable and is not in contravention of
 24 the federal act. The purpose of the loans shall be to assist individuals in meeting the
 25 expense of their education.

26 (2) To enter into agreements and undertakings with the secretary as may be required
 27 and necessary pursuant to the federal act in order to constitute the authority as a

1 state agency qualified and empowered to insure student loans within the meaning of
2 the federal act and to qualify insured student loans for interest payments,
3 reimbursement, reinsurance, and other benefits available under the federal act to the
4 authority.

5 (3) To issue loan guarantees in respect of loans made to eligible borrowers by
6 participating lenders, including the authority. No loan guarantee shall be issued,
7 executed, and delivered by the authority unless any insured student loan resulting
8 shall be the subject of agreements pursuant to the federal act by which the insured
9 student loan is made the subject of interest payments, reimbursements, reinsurance,
10 and other benefits to the extent provided by the federal act.

11 (4) To promulgate administrative regulations pursuant to KRS Chapter 13A pertaining
12 to insured student loans, loan guarantees, loans, and work-study payments and the
13 awarding of grants, scholarships, and honorary scholarships, as provided in KRS
14 164.740 to 164.7891.

15 (5) To enter into contracts with eligible lenders, approved by the state to lend moneys,
16 upon terms and conditions agreed upon between the authority and the eligible
17 lender, to provide for the administration of student financial assistance programs,
18 including, but not by way of limitation, the authority's program of insured student
19 loans.

20 (6) To enter into contracts with eligible institutions, upon terms and conditions agreed
21 upon between the authority and the eligible institution, to provide for the
22 administration of student financial assistance programs, including, but not by way
23 of limitation, the authority's program of insured student loans.

24 (7) To receive funds from any source, public or private, by gift, grant, bequest, loan, or
25 otherwise, either absolutely or in trust, and to expend them, on behalf of the
26 authority and for any of its purposes; and to acquire from any source, public or
27 private, by purchase, lease, gift, bequest, or devise, any property, real, personal, or

- 1 mixed, absolutely or in trust, and to hold, administer, and dispose of it, on behalf of
2 the authority and for any of its purposes. The authority shall not make its debts
3 payable out of any funds except those of the authority.
- 4 (8) To administer federal funds allotted to the state in respect of insured student loans,
5 loan guarantees, loans, work-study, grants, scholarships, administrative costs, and
6 related matters.
- 7 (9) To sue and be sued in the name of the authority and to plead and be impleaded, and
8 to purchase, on behalf of members of the board or officers and employees of the
9 authority, liability insurance for individual protection from liability for acts and
10 omissions committed in the course and scope of the individual's employment or
11 service.
- 12 (10) To collect from individual borrowers loans made by the authority and insured
13 student loans on which the authority has been compelled to meet its loan guarantee
14 obligations following the inability of the participating lender involved to collect the
15 insured student loans.
- 16 (11) To gather information on all loans, scholarships, honorary scholarships, grants, and
17 work-study opportunities available to Kentucky residents attending or planning to
18 attend an eligible institution and to disseminate the information through the
19 methods of mass communication necessary to ensure that Kentucky residents are
20 aware of financial resources available to those attending or desiring to attend an
21 eligible institution.
- 22 (12) To request reports from each eligible institution or eligible lender necessary for the
23 effective performance of its duties and to publish the information it deems
24 necessary.
- 25 (13) To approve, disapprove, limit, suspend, or terminate the participation of, or take
26 emergency action to withhold authority funds and insured student loans from
27 eligible institutions or eligible lenders in programs administered by the board,

- 1 subject to the provisions of the federal act and this chapter.
- 2 (14) To perform other acts necessary or appropriate to carry out effectively the purposes
3 of the authority as provided by KRS 164.740 to 164.7891 and ~~[KRS]~~ 164A.010 to
4 164A.260~~[164A.380]~~.
- 5 (15) If any conflict exists between KRS 164.740 to 164.770 and the federal act, which
6 conflict would result in a loss by the authority of any federal funds, including, but
7 not by way of limitation, federal funds made available to the authority under the
8 federal act, including interest payments and reimbursement for insured student loans
9 in default, to promulgate regulations and policies consistent with the federal act not
10 in derogation of the Constitution and general laws of the Commonwealth.
- 11 (16) Except where specifically prohibited by law, to secure data from any other
12 Commonwealth of Kentucky agency or instrumentality or from any other source in
13 furtherance of any purposes of the authority related to any program or function
14 administered by the authority.
- 15 (17) To enter into contracts with public or private nonprofit agencies, eligible to hold or
16 insure student loans under the federal act, to provide for the exchange of
17 information, not in contravention of any federal or state law, or the provision of
18 services necessary to the administration of the authority's insured student loan
19 programs.
- 20 (18) To enter into contracts with the Kentucky Higher Education Student Loan
21 Corporation, the Kentucky Educational Savings Plan Trust, and the Commonwealth
22 postsecondary education prepaid tuition trust fund as necessary or appropriate to
23 facilitate their common administration, operation, and management, as required
24 pursuant to KRS Chapter 164A.
- 25 (19) To act as the board of directors of the Commonwealth postsecondary education
26 prepaid tuition trust fund under KRS 164A.700 to 164A.709.
- 27 (20) To conduct, in accordance with KRS Chapter 13B, administrative hearings

1 pertaining to any adverse action by the authority affecting participating institutions
2 and lenders, eligible students, and borrowers of loans made by the authority and
3 insured student loans guaranteed by the authority. Wage garnishment hearings and
4 administrative review procedures pertaining to disputes concerning setoff of federal
5 tax refunds shall be exempt under KRS 13B.020 and shall be conducted in
6 accordance with applicable federal law. In an exempt hearing, the board or a hearing
7 officer designated by the board may issue administrative subpoenas for the
8 attendance of witnesses and the production of documents relevant to the issues in
9 dispute. Compliance with the subpoenas shall be enforceable by a court of
10 competent jurisdiction.

11 (21) To provide upon termination of the retirement plan authorized by Executive Order
12 75-964 to active and retired employees of the authority who participated in that
13 plan, health insurance premiums and disability insurance benefits as provided to
14 employees who participate in a state-administered retirement system pursuant to
15 KRS 18A.225 to 18A.229, 61.600, and 61.702.

16 (22) To delegate to the executive director general supervision and direction over the
17 administrative function of the authority and its employees in carrying out the
18 policies, programs, administrative regulations, and directives of the board.

19 ➔Section 14. KRS 164A.709 is amended to read as follows:

20 (1) A purchaser may terminate a prepaid tuition contract at any time upon written
21 request to the office.

22 (2) Upon termination of a prepaid tuition contract at the request of a purchaser, the
23 office shall pay from the fund to the purchaser:

24 (a) The value of the prepaid tuition account or, if the contract has not been paid in
25 full, a pro rata amount calculated according to the portion of the plan that had
26 been paid, if the contract is terminated for the death of the qualified
27 beneficiary or the disability of the qualified beneficiary that, in the opinion of

- 1 the office, would make attendance by the beneficiary at an eligible educational
2 institution impossible or unreasonably burdensome;
- 3 (b) The amounts paid on the purchaser's prepaid tuition contract if the contract is
4 terminated and a request for refund is made before July 1 of the qualified
5 beneficiary's projected college entrance year. The board may determine a rate
6 of interest to accrue for payment on the amount otherwise payable under this
7 paragraph;
- 8 (c) For a prepaid tuition account terminated after June 30 of the qualified
9 beneficiary's projected college entrance year and prior to June 27, 2019:
- 10 1. The value of the prepaid tuition account for the 2014-2015 academic
11 year for accounts with a utilization period end date prior to 2012; or
- 12 2. The value of the prepaid tuition account at the end of the account's
13 utilization period plus three percent (3%) per annum for a maximum of
14 two (2) years thereafter, or the applicable tuition plan value increase,
15 whichever is less, for accounts with a utilization period end date of 2012
16 or later; or
- 17 (d) For a prepaid tuition account terminated after June 30 of the qualified
18 beneficiary's projected college entrance year and on or after June 27, 2019, the
19 value of the prepaid tuition account at the time of termination.
- 20 (3) All refunds paid shall be less any benefits previously paid from the plan and any
21 administrative fees as determined by the board. The office may impose a fee upon
22 termination of the account for administrative costs and deduct the fee from the
23 amount otherwise payable under this section.
- 24 (4) If a qualified beneficiary is awarded a scholarship that covers tuition costs included
25 in a prepaid tuition contract, the purchaser may request a refund consisting of the
26 amount of the value of the prepaid tuition account, not to exceed the amount of the
27 scholarship.

- 1 (5) If the purchaser wishes to transfer funds from the prepaid tuition account to the
2 Kentucky Educational Savings Plan Trust, the purchaser may do so under
3 administrative regulations promulgated by the board and the board of directors of
4 the Kentucky Educational Savings Plan Trust under Section 4 of this Act~~KRS~~
5 ~~164A.325~~. The transfer amount shall be calculated in the same way a refund is
6 determined in accordance with this section.
- 7 (6) If the purchaser wishes to transfer funds from the prepaid tuition account to another
8 qualified tuition program as defined in 26 U.S.C. sec. 529(b)(1), the purchaser may
9 do so under administrative regulations promulgated by the board. The transfer
10 amount shall be calculated in the same way a refund is determined in accordance
11 with this section.
- 12 (7) The board may terminate a prepaid tuition contract at any time due to the fraud or
13 misrepresentation of a purchaser or qualified beneficiary with respect to the prepaid
14 tuition contract.
- 15 (8) All operations of the Commonwealth postsecondary education prepaid tuition trust
16 fund and the Tuition Account Program Office shall end on June 30, 2030. On or
17 before that date, any remaining prepaid tuition account funds that have not been
18 utilized, transferred to another qualified tuition program, or refunded upon the
19 request of the purchaser shall be refunded to the purchaser in accordance with
20 subsection (2) of this section.
- 21 ➔Section 15. KRS 238.535 is amended to read as follows:
- 22 (1) Any charitable organization conducting charitable gaming in the Commonwealth of
23 Kentucky shall be licensed by the department. A charitable organization qualifying
24 under subsection (12) of this section but not exceeding the limitations provided in
25 this subsection shall be exempt from the licensure requirements when conducting
26 the following charitable gaming activities:
- 27 (a) Bingo in which the gross receipts do not exceed a total of twenty-five

1 thousand dollars (\$25,000) per year;

2 (b) A raffle or raffles for which the gross receipts do not exceed twenty-five
3 thousand dollars (\$25,000) per year; and

4 (c) A charity fundraising event or events that do not involve special limited
5 charitable games and the gross gaming receipts for which do not exceed
6 twenty-five thousand dollars (\$25,000) per year.

7 However, at no time shall a charitable organization's total limitations under this
8 subsection exceed twenty-five thousand dollars (\$25,000).

9 (2) (a) Any charitable organization exempt from the process of applying for a license
10 under subsection (1) of this section, shall notify the department in writing, on
11 a simple form issued by the department, of its intent to engage in exempt
12 charitable gaming and the address at which the gaming is to occur. Any
13 charitable organization exempt from the process of applying for a license
14 under subsection (1) of this section, shall comply with all other provisions of
15 this chapter relating to the conduct of charitable gaming, except:

- 16 1. Payment of the fee imposed under the provisions of KRS 238.570; and
17 2. The quarterly reporting requirements imposed under the provisions of
18 KRS 238.550(7), unless the exempt charitable organization obtains a
19 retroactive license pursuant to subsection (9) of this section.

20 (b) Before January 31 of the year immediately following the year of exemption, a
21 charitable organization exempt from licensure under the provisions of
22 subsection (1) of this section shall file a financial report with the department,
23 on a form issued by the department, that contains the following information:

- 24 1. The type of gaming activity in which it engaged during that year;
25 2. The total gross receipts derived from gaming;
26 3. The amount of charitable gaming expenses paid;
27 4. The amount of net receipts derived; and

- 1 5. The disposition of those net receipts.
- 2 (3) An exemption that has been granted to a charitable organization for the preceding
3 calendar year shall be automatically renewed on January 1 of the following year.
- 4 (4) If upon receipt of the financial report the department determines that the
5 information appearing on the financial report renders the charitable organization
6 ineligible to possess an exemption, the department shall notify the charitable
7 organization that its exemption is rescinded. The organization may request an
8 appeal of this rescission pursuant to KRS 238.565.
- 9 (5) If the annual financial report is not received by January 31, the exemption is
10 automatically rescinded unless an extension of no more than thirty (30) days is
11 granted by the department. The organization may request an appeal of this
12 rescission pursuant to KRS 238.565.
- 13 (6) If an exemption is revoked because an organization has exceeded the limit imposed
14 in subsection (1) of this section, the organization shall apply for a retroactive license
15 in accordance with subsection (7) of this section.
- 16 (7) If an organization exceeds the limit imposed by any subsection of this section it
17 shall:
- 18 (a) Report the amount to the department; and
- 19 (b) Apply for a retroactive charitable gaming license.
- 20 (8) Upon receipt of a report and application for a retroactive charitable gaming license,
21 the department shall investigate to determine if the organization is otherwise
22 qualified to hold the license.
- 23 (9) If the department determines that the applicant is qualified, it shall issue a charitable
24 gaming license retroactive to the date on which the exemption limit was exceeded.
25 The retroactive charitable gaming license shall be issued in the same manner as
26 regular charitable gaming licenses.
- 27 (10) If the department determines that the applicant is not qualified it shall deny the

1 license and take enforcement action, if appropriate.

2 (11) Once a retroactive or regular gaming license is issued to an organization, that
3 organization shall not be eligible for exempt status in the future and shall maintain a
4 charitable gaming license if it intends to continue charitable gaming activities,
5 unless the charitable organization has not exceeded the exemption limitations of
6 subsection (1) of this section for a period of two (2) years prior to its exemption
7 request.

8 (12) (a) In order to qualify for licensure, a charitable organization shall:

9 1. a. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3),
10 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered
11 under a group ruling issued by the Internal Revenue Service under
12 authority of those sections; or

13 b. Be organized within the Commonwealth of Kentucky as a
14 common school as defined in KRS 158.030, as an institution of
15 higher education as defined in Section 2 of this Act~~KRS~~
16 ~~164A.305~~, or as a state college or university as provided for in
17 KRS 164.290;

18 2. Have been established and continuously operating within the
19 Commonwealth of Kentucky for charitable purposes, other than the
20 conduct of charitable gaming, for a period of three (3) years prior to
21 application for licensure. For purposes of this paragraph, an applicant
22 shall demonstrate establishment and continuous operation in Kentucky
23 by its conduct of charitable activities from an office physically located
24 within Kentucky both during the three (3) years immediately preceding
25 its application for licensure and at all times during which it possesses a
26 charitable gaming license. However, a charitable organization that
27 operates for charitable purposes in more than ten (10) states and whose

1 principal place of business is physically located in a state other than
2 Kentucky may satisfy the requirements of this paragraph if it can
3 document that it has:

4 a. Been actively engaged in charitable activities and has made
5 reasonable progress, as defined in subparagraph 3. of this
6 paragraph, in the conduct of charitable activities or the expenditure
7 of funds within Kentucky for a period of three (3) years prior to
8 application for licensure; and

9 b. Operated for charitable purposes from an office or place of
10 business in the Kentucky county where it proposes to conduct
11 charitable gaming for at least one (1) year prior to application for
12 licensure, in accordance with subparagraph 4. of this paragraph
13 and paragraph (c) of this subsection;

14 3. Have been actively engaged in charitable activities during the three (3)
15 years immediately prior to application for licensure and be able to
16 demonstrate, to the satisfaction of the department, reasonable progress in
17 accomplishing its charitable purposes during this period. As used in this
18 paragraph, "reasonable progress in accomplishing its charitable
19 purposes" means the regular and uninterrupted conduct of activities
20 within the Commonwealth or the expenditure of funds within the
21 Commonwealth to accomplish relief of poverty, advancement of
22 education, protection of health, relief from disease, relief from suffering
23 or distress, protection of the environment, conservation of wildlife,
24 advancement of civic, governmental, or municipal purposes, or
25 advancement of those purposes delineated in KRS 238.505(3). In order
26 to demonstrate reasonable progress in accomplishing its charitable
27 purposes when applying to renew an existing license, a licensed

1 charitable organization shall additionally provide to the department a
2 detailed accounting regarding its expenditure of charitable gaming net
3 receipts for the purposes described in this paragraph; and

4 4. Have maintained an office or place of business, other than for the
5 conduct of charitable gaming, for at least one (1) year in the county in
6 which charitable gaming is to be conducted. The office or place of
7 business shall be a separate and distinct address and location from that
8 of any other licensee of the Department of Charitable Gaming; except
9 that up to three (3) licensed charitable organizations may have the same
10 address if they legitimately share office space.

11 (b) 1. A charitable organization that has established and maintained an office
12 or place of business in the county for a period of at least one (1) year
13 may hold a raffle drawing or a charity fundraising event, including
14 special limited charity fundraising events, in a Kentucky county other
15 than that in which the organization's office or place of business is
16 located.

17 2. For raffles, the organization shall notify the Department of Charitable
18 Gaming in writing of the organization's intent to change the drawing's
19 location at least thirty (30) days before the drawing takes place. This
20 written notification:

21 a. May be transmitted in any commercially reasonable means,
22 authorized by the department, including facsimile and electronic
23 mail; and

24 b. Shall set out the place and the county in which the drawing will
25 take place.

26 Approval by the department shall be received prior to the conduct of the
27 raffle drawing at the new location.

1 (c) Any charitable organization that was registered with the county clerk to
2 conduct charitable gaming in a county on or before March 31, 1992, shall
3 satisfy the requirement contained in paragraph (a)4. of this subsection if it
4 maintained a place of business or operation, other than for the conduct of
5 charitable gaming, for one (1) year prior to application in a Kentucky county
6 adjoining the county in which they were registered.

7 (13) In applying for a license, the information to be submitted shall include but not be
8 limited to the following:

- 9 (a) The name and address of the charitable organization;
- 10 (b) The date of the charitable organization's establishment in the Commonwealth
11 of Kentucky and the date of establishment in the county or counties in which
12 charitable gaming is to be conducted;
- 13 (c) A statement of the charitable purpose or purposes for which the organization
14 was organized. If the charitable organization is incorporated, a copy of the
15 articles of incorporation shall satisfy this requirement;
- 16 (d) A statement explaining the organizational structure and management of the
17 organization. For incorporated entities, a copy of the organizations' bylaws
18 shall satisfy this requirement;
- 19 (e) A detailed accounting of the charitable activities in which the charitable
20 organization has been engaged for the three (3) years preceding application for
21 licensure;
- 22 (f) The names, addresses, dates of birth, and Social Security numbers of all
23 officers of the organization;
- 24 (g) The names, addresses, dates of birth, and Social Security numbers of all
25 employees and members of the charitable organization who will be involved
26 in the management and supervision of charitable gaming. No fewer than two
27 (2) employees or members of the charitable organization who are involved in

1 the management and supervision of charitable gaming, along with the chief
2 executive officer or the director of the applicant organization, shall be
3 designated as chairpersons;

4 (h) The address of the location at which charitable gaming will be conducted and
5 the name and address of the owner of the property, if it is owned by a person
6 other than the charitable organization;

7 (i) A copy of the letter or other legal document issued by the Internal Revenue
8 Service to grant tax-exempt status;

9 (j) A statement signed by the presiding or other responsible officer of the
10 charitable organization attesting that the information submitted in the
11 application is true and correct and that the organization agrees to comply with
12 all applicable laws and administrative regulations regarding charitable
13 gaming;

14 (k) An agreement that the charitable organization's records may be released by the
15 Federal Internal Revenue Service to the department; and

16 (l) Any other information the department deems appropriate.

17 (14) (a) An organization or a group of individuals that does not meet the licensing
18 requirements of subsection (12) of this section may hold a raffle if:

- 19 1. The gross receipts do not exceed five hundred dollars (\$500);
- 20 2. All proceeds from the raffle are distributed to a charitable organization;
- 21 and
- 22 3. The organization or group of individuals holds no more than three (3)
23 raffles each year;

24 and shall be exempt from complying with the notification, application, and
25 reporting requirements of subsections (2) and (13) of this section.

26 (b) An organization or a group of individuals that does not meet the licensing
27 requirements of subsection (12) of this section may hold a raffle if:

- 1 1. The organization holds a special event raffle license issued by the
2 department and complies with the regulatory requirements in this
3 chapter, including but not limited to the quarterly reporting requirements
4 of KRS 238.550(7), the retention requirements of KRS 238.536, and
5 payment of the fee imposed by KRS 238.570;
- 6 2. The organization possesses a tax-exempt status under 26 U.S.C. sec.
7 501(c)(7);
- 8 3. The organization holds no more than twelve (12) raffles per year;
- 9 4. Each raffle complies with the department's raffle standards in KRS
10 238.545 and administrative regulations promulgated thereunder and is
11 approved by the department in writing prior to the sale of the first raffle
12 ticket;
- 13 5. The gross receipts of each raffle do not exceed five hundred thousand
14 dollars (\$500,000); and
- 15 6. One hundred percent (100%) of the net receipts of each raffle shall be
16 distributed to a charitable organization licensed by the department
17 pursuant to subsection (12) of this section to conduct charitable gaming
18 as follows:
 - 19 a. All distributed net receipts shall be maintained by the recipient
20 licensed charitable organization in a separate account to be
21 designated as the "raffle recipient account";
 - 22 b. All distributed net receipts shall be expended by the recipient
23 licensed charitable organization to further the charitable purpose of
24 the recipient licensed charitable organization as required by KRS
25 238.550(4); and
 - 26 c. All distributed net receipts, and the expenditure thereof, shall be
27 reported to the department and be subject to the department's

1 auditing and investigative authority consistent with the provisions
2 of this chapter.

3 (c) An applicant qualifying under paragraph (b) of this subsection shall submit an
4 application for a special event raffle license, and the information to be
5 submitted shall include but not be limited to the following:

- 6 1. The name and address of the organization;
- 7 2. The date of the organization's establishment in the Commonwealth of
8 Kentucky and the date of the organization's establishment in the county
9 or counties in which charitable gaming is to be conducted;
- 10 3. A statement of the purpose or purposes for which the organization was
11 organized and identification of the licensed charitable organization to
12 which the applicant will distribute its net receipts. If the organization is
13 incorporated, a copy of the articles of incorporation shall satisfy this
14 requirement;
- 15 4. A statement explaining the organizational structure and management of
16 the organization. For incorporated entities, a copy of the organization's
17 bylaws shall satisfy this requirement;
- 18 5. The names, addresses, dates of birth, and Social Security numbers of all
19 officers of the organization;
- 20 6. The names, addresses, dates of birth, and Social Security numbers of all
21 employees and members of the organization who will be involved in the
22 management and supervision of charitable gaming. No fewer than two
23 (2) employees or members of the organization who are involved in the
24 management and supervision of charitable gaming, along with the chief
25 executive officer or the director of the applicant organization, shall be
26 designated as chairpersons;
- 27 7. The address of the location at which charitable gaming will be

- 1 conducted and the name and address of the owner of the property, if it is
2 owned by a person other than the organization;
- 3 8. A copy of the letter or other legal document issued by the Internal
4 Revenue Service to grant tax-exempt status;
- 5 9. A statement signed by the presiding or other responsible officer of the
6 organization attesting that the information submitted in the application is
7 true and correct and that the organization agrees to comply with all
8 applicable laws and administrative regulations regarding charitable
9 gaming;
- 10 10. An agreement that the organization's records may be released by the
11 federal Internal Revenue Service to the department; and
- 12 11. Any other information as determined by the department through the
13 promulgation of administrative regulations.
- 14 (15) The department may issue a license for a specified period of time, based on the type
15 of charitable gaming involved and the desired duration of the activity.
- 16 (16) The department shall charge a fee for each license issued and renewed, not to
17 exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed
18 in a graduated scale promulgated by administrative regulations and based on type of
19 license, type of charitable gaming, actual or projected gross receipts, or other
20 applicable factors, or combination of factors.
- 21 (17) (a) A licensed charitable organization may place its charitable gaming license in
22 escrow if:
- 23 1. The licensee notifies the department in writing that it desires to place its
24 license in escrow; and
- 25 2. The license is in good standing and the department has not initiated
26 disciplinary action against the licensee.
- 27 (b) During the escrow period, the licensee shall not engage in charitable gaming,

1 and the escrow period shall not be included in calculating the licensee's
2 retention rate under KRS 238.536.

3 (c) A charitable organization may apply for reinstatement of its active license and
4 the license shall be reinstated provided:

- 5 1. The charitable organization continues to qualify for licensure;
- 6 2. The charitable organization has not engaged in charitable gaming during
7 the escrow period; and
- 8 3. The charitable organization pays a reinstatement fee established by the
9 department.