

1 AN ACT relating to educational opportunity account.

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

3 ➔Section 1. KRS 141.502 is amended to read as follows:

4 As used in KRS 141.500 to 141.528:

- 5 (1) "Account-granting organization" or "AGO" means a nonprofit organization that
6 complies with the requirements of KRS 141.500 to 141.528 and:
- 7 (a) Receives contributions, allocates funds, and administers EOAs; or
8 (b) Is an intermediary organization;
- 9 (2) "Contribution" means a donation in the form of cash or marketable securities that is
10 eligible for the tax credit permitted by KRS 141.522;
- 11 (3) "Curriculum" means a complete course of study for a particular content area or
12 grade level;
- 13 (4) "Education opportunity account" or "EOA" means the account to which funds are
14 allocated by an AGO to the parent of an EOA student in order to pay for expenses
15 to educate the EOA student pursuant to the requirements of KRS 141.500 to
16 141.528;
- 17 (5) "Education service provider" means a person or organization that receives payments
18 from an EOA to provide educational materials and services to EOA students;
- 19 (6) "Eligible student" means a resident of Kentucky who:
- 20 (a) Is a member of a household with an annual household income at the time of
21 initially applying for an EOA from an AGO under this section of not more
22 than ***two hundred percent (200%)***~~one hundred seventy five percent (175%)~~
23 of the amount of household income necessary to establish eligibility for
24 reduced-price meals based on size of household as determined annually by the
25 United States Department of Agriculture applicable to the Commonwealth,
26 pursuant to 42 U.S.C. secs. 1751 to 1789;
- 27 (b) Has previously received an EOA from an AGO under this section; or

- 1 (c) Is a member of the household of an eligible student that currently has an EOA
2 from an AGO under this section;
- 3 (7) "Eligible taxpayer" means an individual or business, including but not limited to a
4 corporation, S corporation, partnership, limited liability company, or sole
5 proprietorship subject to tax imposed under KRS 141.020, 141.040, or 141.0401;
- 6 (8) "EOA student" means an eligible student who is participating in the EOA program;
- 7 (9) "Income" has the same meaning as in the United States Department of Agriculture,
8 Food and Nutrition Service, Child Nutrition Programs, Income Eligibility
9 Guidelines, Federal Register Vol. 83, No. 89, published May 8, 2018, and as
10 updated annually as authorized by 42 U.S.C. sec. 1758(b)(1)(A);
- 11 (10) "Intermediary organization" means a nonprofit organization that complies with the
12 requirements of KRS 141.500 to 141.528 and receives contributions to fund AGOs;
13 and
- 14 (11) "Parent" means a biological or adoptive parent, legal guardian, custodian, or other
15 person with legal authority to act on behalf of an EOA student.
- 16 ➔Section 2. KRS 141.504 is amended to read as follows:
- 17 (1) Each AGO shall create a uniform process for determining the amount allocated to
18 each eligible student's EOA with the following limitations:
- 19 (a) For eligible students that intend to use the funds in the EOA to pay tuition at a
20 nonpublic school or tuition as described in KRS 158.120(2), the EOA funds
21 shall not exceed the lesser of:
- 22 1. Their parents' demonstrated financial need as determined by an
23 independent financial analysis performed by an organization that is:
- 24 a. Experienced in evaluating a student's need for financial aid; and
25 b. Included on the department's list of approved organizations as
26 required by KRS 141.514(2)(a); or
- 27 2. The actual amount of tuition and required fees charged by the school to

1 students who do not receive assistance under this program;

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

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

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

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

14 (2) ~~[(a)]~~ The funds in an EOA shall not be used for athletics or any associated fees and
15 shall only be used to pay for ~~the tuition and fee expenses permitted by paragraph~~

16 ~~(b) of this subsection and~~ the following qualifying expenses if covered by the AGO and
17 incurred for the purpose of educating an EOA student:

18 ~~(a)[1.]~~ Tuition or fees to attend a prekindergarten to grade twelve (12) public
19 school;

20 ~~(b)~~ **Tuition or fees to attend a prekindergarten to grade twelve (12) nonpublic**
21 **school;**

22 ~~(c)[2.]~~ Tuition or fees for online learning programs;

23 ~~(d)[3.]~~ Tutoring services provided by an individual or a tutoring facility;

24 ~~(e)[4.]~~ Services contracted for and provided by a public school, including but
25 not limited to individual classes and extracurricular activities and programs;

26 ~~(f)[5.]~~ Textbooks, curriculum, or other instructional materials, including but
27 not limited to any supplemental materials or associated online instruction

- 1 required by either a curriculum or an education service provider;
- 2 ~~(g)~~^[6.] Computer hardware or other technological devices that are primarily
3 used to help meet an EOA student's educational needs;
- 4 ~~(h)~~^[7.] Educational software and applications;
- 5 ~~(i)~~^[8.] School uniforms;
- 6 ~~(j)~~^[9.] Fees for nationally standardized assessments, advanced placement
7 examinations, examinations related to college or university admission, and
8 tuition or fees for preparatory courses for these;
- 9 ~~(k)~~^[10.] Tuition or fees for summer education programs and specialized after-
10 school education programs, excluding after-school childcare;
- 11 ~~(l)~~^[11.] Tuition, fees, instructional materials, and examination fees at a career or
12 technical school;
- 13 ~~(m)~~^[12.] Educational services and therapies, including but not limited to
14 occupational, behavioral, physical, speech-language, and audiology therapies
15 provided by a licensed professional;
- 16 ~~(n)~~^[13.] Tuition and fees at an institution of higher education for dual credit
17 courses; and
- 18 ~~(o)~~^[14.] Fees for transportation paid to a fee-for-service transportation provider
19 for the student to travel to and from an education service provider.
- 20 ~~{(b) In addition to the variety of education-related expenses for public and
21 nonpublic schools in the Commonwealth as provided by paragraph (a) of this
22 subsection, EOA students that are residents of counties with a population of
23 ninety thousand (90,000) or more, as determined by the 2010 decennial report
24 of the United States Census Bureau, shall be permitted to use funds received
25 through the EOA program for tuition and fees to attend nonpublic schools,
26 because students in these counties have access to substantial existing
27 nonpublic school infrastructure and there is capacity in these counties to either~~

1 ~~grow existing tuition assistance programs or form new nonprofits from~~
2 ~~existing networks that can provide tuition assistance to students over the~~
3 ~~course of the pilot program. Pursuant to KRS 141.524, the General Assembly~~
4 ~~shall assess whether the purposes of the EOA program are being fulfilled.]~~

- 5 (3) EOA funds shall not be refunded, rebated, or shared with a parent or EOA student
6 in any manner. Any refund or rebate for materials or services purchased with EOA
7 funds shall be credited directly to the student's EOA.
- 8 (4) Parents may make payments for the costs of educational materials and services not
9 covered by the funds in their student's EOA, but personal deposits into an EOA
10 shall not be permitted.
- 11 (5) Funds allocated to an EOA shall not constitute taxable income to the parent or the
12 EOA student.
- 13 (6) (a) An EOA shall remain in force, unless the EOA is closed because of a
14 substantial misuse of funds, and any unused funds shall roll over from quarter
15 to quarter and from year to year until:
- 16 1. The parent withdraws the EOA student from the EOA program;
17 2. The EOA student receives a high school diploma or equivalency
18 certificate; or
19 3. The end of the school year in which the student reaches twenty-one (21)
20 years of age;
21 whichever occurs first.
- 22 (b) When an EOA is closed, any unused funds shall revert to the AGO that
23 granted the EOA and be allocated by that AGO to fund other EOAs. If the
24 AGO that granted the EOA is no longer operating, the funds shall be
25 transferred to another AGO operating in good standing with the
26 Commonwealth.
- 27 (7) An AGO shall first prioritize funding EOAs for students, their siblings, and foster

1 children living in the same household who received an EOA in the previous
2 academic year and then to first-time applicants in accordance with subsection (8) of
3 this section.

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

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

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

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

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

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

21 ➔Section 3. KRS 141.510 is amended to read as follows:

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

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

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

26 (b) A copy of the AGO's Internal Revenue Service determination letter as a
27 Section 501(c)(3) nonprofit~~[not for profit]~~ organization or documentation of

1 *application for the same;*

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

4 (d) A description of the application process the AGO will use for parents and
5 eligible students;

6 (e) A description of the methodology the AGO will use to establish, fund, and
7 manage EOAs;

8 (f) A description of the process the AGO will use to approve education service
9 providers;

10 (g) A description of how the AGO will inform parents of approved education
11 service providers; and

12 (h) A description of the AGO's procedures for crediting refunds from an
13 education service provider back to a student's EOA.

14 (3) An application for renewal of certification as an AGO shall include:

15 (a) The AGO's completed Internal Revenue Service Form 990, submitted no later
16 than November 30 of the year before the academic year that the AGO intends
17 to fund EOAs;

18 (b) A copy of any audit that may be required by the department;~~and~~

19 (c) *A copy of the AGO's Internal Revenue Service determination letter as a*
20 *Section 501(c)(3) nonprofit organization if the initial certification was*
21 *granted based on an application; and*

22 *(d)* 1. An annual report that includes:

23 a. The number of applications the AGO received during the previous
24 academic year, by county and by grade level;

25 b. The name and address of all students that received EOA funds
26 from the AGO during the previous academic year;

27 c. When the AGO is an intermediary organization, the name and

- 1 address of all AGOs that received funds from the intermediary
2 organization during the last fiscal year;
- 3 d. The total number of EOAs the AGO maintains;
- 4 e. The amount of funds the AGO:
- 5 i.. Received to fund EOAs during the last fiscal year;
- 6 ii. Distributed into EOAs during the last fiscal year;
- 7 iii. Has remaining after the distribution into EOAs and any
8 obligations to fund EOAs in the future;
- 9 iv. Spent on administrative expenses and an accounting thereof
10 during the last fiscal year; and
- 11 v. Spent on fees to private financial management firms or other
12 organizations to maintain records and process transactions of
13 the EOAs;
- 14 f. When the AGO is an intermediary organization, the amount of
15 funds the intermediary organization:
- 16 i. Received to distribute to AGOs during the last fiscal year;
- 17 ii. Distributed to each AGO during the last fiscal year;
- 18 iii. Has remaining after the distribution into AGOs and any
19 obligations to distribute to AGOs in the future;
- 20 iv. Spent on administrative expenses and an accounting thereof
21 during the last fiscal year; and
- 22 v. Spent on fees to private financial management firms or other
23 organizations to maintain records and process transactions;
- 24 g. A list of the AGO's approved education service providers; and
- 25 h. A description of how the AGO has complied with the operational
26 requirements and responsibilities of KRS 141.500 to 141.528.
- 27 2. The annual report shall also:

- 1 a. Comply with uniform financial accounting standards;
- 2 b. Be attested to by an independent certified public accountant in
- 3 accordance with procedures promulgated by the department; and
- 4 c. Be free of material misstatements or exceptions.

5 (4) The department shall only certify an AGO or renew an AGO's certification if the
6 organization meets the requirements established by KRS 141.500 to 141.528. The
7 department shall issue initial certifications within thirty (30)~~sixty (60)~~ days of
8 receiving the application and renew certifications within thirty (30) days of
9 receiving the application.

10 (5) Upon application for renewal, an AGO shall demonstrate that:

- 11 (a) It is an intermediary organization that collects contributions exclusively for
- 12 the use by AGOs; or
- 13 (b) It includes two (2) or more education service providers in its EOA program
- 14 and has awarded at least fifty (50) EOAs aggregating a minimum of two
- 15 hundred thousand dollars (\$200,000) in the previous year and is expected to
- 16 award at least fifty (50) EOAs aggregating a minimum of two hundred
- 17 thousand dollars (\$200,000) in the succeeding year.

18 ➔Section 4. KRS 141.512 is amended to read as follows:

- 19 (1) (a) Except as provided by paragraph (b) of this subsection, an AGO shall ensure
20 that at least ninety percent (90%) of the total annual contributions received are
21 allocated to EOAs no later than the last day of the AGO's immediately
22 succeeding calendar year or fiscal year, as applicable, unless the current year's
23 total annual contributions received by the AGO exceed an amount equal to the
24 average of the total annual contributions received in the immediately
25 preceding three (3) years by more than fifteen percent (15%), in which case
26 the excess amount may be carried forward and expended for EOAs in three (3)
27 equal installments over the immediately succeeding three (3) years.

1 **(b) In the first year of operation, an AGO may allocate less than ninety percent**
2 **(90%) of the total annual contributions received to EOAs and carry forward**
3 **any unallocated contributions to the succeeding year. In the second year of**
4 **operation, the AGO shall allocate to EOAs at least ninety percent (90%) of**
5 **the total annual contributions received from the first and second year of**
6 **operation, in accordance with paragraph (a) of this subsection.**

- 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 KRS 141.522 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 readily
12 available to interested families and may be submitted through various sources,
13 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 may
17 contract with to process EOA transactions or maintain records for other aspects of
18 the EOA program.
- 19 (6) (a) An AGO may transfer funds to another AGO if additional funds are required
20 to meet EOA demands at the receiving AGO or if the transferring AGO
21 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 KRS
3 141.510.

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

9 (7) An AGO may accept donations that are not eligible for the tax credit permitted by
10 KRS 141.522, gifts, and grants to cover administrative costs, to inform the public
11 about the EOA program, to fund additional EOAs or to offer assistance outside of
12 the EOA program. Donations that are not eligible for the tax credit permitted by
13 KRS 141.522 shall not be subject to KRS 141.500 to 141.528.

14 ➔Section 5. KRS 141.522 is amended to read as follows:

15 (1) (a) Effective for taxable years beginning on or after January 1, 2021,~~but before~~
16 ~~January 1, 2026,~~ a nonrefundable, nontransferable tax credit shall be
17 permitted against the tax imposed by KRS 141.020 or 141.040 and 141.0401,
18 with the ordering of credit as provided in KRS 141.0205 as applicable, for
19 contributions made during a taxable year to one (1) or more AGOs in
20 accordance with the EOA program. To qualify for this credit, a taxpayer filing
21 as an individual shall elect to claim a federal and Kentucky contribution
22 deduction associated with the contributions made to an AGO that does not
23 exceed an amount equal to the total contribution for the taxable year less the
24 amount of credit allowed by this section for the taxable year.

25 (b) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit
26 against the limited liability entity tax imposed by KRS 141.0401, and shall
27 also pass the credit through to its members, partners, or shareholders in the

1 same proportion as the distributive share of income or loss is passed through.

2 (2) The aggregate value of the total annual tax credit cap awarded shall ***be determined***
 3 ***as follows:*** ~~not exceed twenty-five million dollars (\$25,000,000)]~~

4 ***(a) For fiscal year ending June 30, 2022, the annual tax credit cap shall not***
 5 ***exceed twenty-five million dollars (\$25,000,000); and***

6 ***(b) In each subsequent fiscal year:***

7 ***1. If the aggregate value of all credits awarded during the immediately***
 8 ***preceding fiscal year equals at least ninety percent (90%) of the***
 9 ***annual credit cap available for that year, the annual credit cap for the***
 10 ***current fiscal year shall be increased by twenty-five percent (25%)***
 11 ***over the credit cap amount established for the immediately preceding***
 12 ***fiscal year but shall not exceed fifty million dollars (\$50,000,000)***
 13 ***annually; or***

14 ***2. If the aggregate value of all credits awarded during the immediately***
 15 ***preceding fiscal year does not equal at least ninety percent (90%) of***
 16 ***the annual credit cap for that fiscal year, the annual credit cap shall***
 17 ***remain at the same level as the annual credit cap for the immediately***
 18 ***preceding year.***

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

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

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

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

26 (b) If the multi-year pledge is made by the taxpayer and the amount of the
 27 contributions for each of the multiple taxable years is equal to or more than

1 the amount of contributions made to the AGO in the taxable year within
2 which the pledge is made, the amount of allowable credit shall be increased by
3 two (2) percentage points to ninety-seven percent (97%) in the taxable year
4 within which the pledge is made and for each pledged year.

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

8 (5) Any tax credit awarded under this section that is not used by the taxpayer in the
9 current taxable year may be carried forward for up to five (5) succeeding taxable
10 years until the tax credit has been utilized.

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