

164A.707 Prepaid tuition contracts -- Amendments -- Accounts not subject to creditors or taxes -- No guarantee of attendance at institution -- Payment of contracts -- Beneficiaries -- Investments and earnings -- Contracts not securities or annuities -- Contracts subject to amendment by subsequent change to statute, regulation, or policy.

- (1) Purchasers buying prepaid tuition for a qualified beneficiary shall enter into prepaid tuition contracts with the board. These contracts shall be in a form as shall be determined by the office. The contract shall provide for the purchase of a tuition plan for prepaid tuition for the qualified beneficiary from one (1) to five (5) specific academic years.
- (2) Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:
 - (a) The qualified beneficiary, in accordance with 26 U.S.C. sec. 529;
 - (b) The academic year or years for which prepaid tuition is purchased;
 - (c) A tuition plan designation to another tuition plan designation;
 - (d) The number of years for which prepaid tuition is purchased; or
 - (e) Other provisions of the prepaid tuition contract as permitted by the board.
- (3) A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary. Prepaid tuition accounts shall be exempt from all state and local taxes including, but not limited to, intangible personal property tax levied under KRS 132.020, individual income tax levied under KRS 141.020, and the inheritance tax levied under KRS Chapter 140. Payments from a prepaid tuition account used to pay qualified postsecondary education expenses, or disbursed due to the death or disability of the beneficiary, or receipt of a scholarship by the beneficiary shall be exempt from tax liabilities.
- (4) Nothing in KRS 164A.700 to 164A.709 or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted, or be graduated from an eligible educational institution.
- (5) Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract payments may be made in a lump sum or installments.
- (6) The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract, except for a prepaid tuition contract purchased in accordance with KRS 164A.700(13)(d). In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.
- (7) The prepaid tuition contract shall provide that the purchaser and the qualified beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account. Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary. No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.

- (8) A prepaid tuition contract does not constitute a security as defined in KRS 292.310 or an annuity as defined in KRS 304.5-030.
- (9) Each prepaid tuition contract is subject to, and shall incorporate by reference, all operating procedures and policies adopted by the board, the statutes governing prepaid tuition contracts in KRS 164A.700 to 164A.709 and 393.015, and administrative regulations promulgated thereunder. Any amendments to statutes, administrative regulations, and operating procedures and policies shall automatically amend prepaid tuition contracts, with retroactive or prospective effect, as applicable.

Effective: April 25, 2006

History: Amended 2006 Ky. Acts ch. 252, Pt. XXXI, sec. 6, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 162, sec. 7, effective July 1, 2005; and ch. 173, Pt. XXI, sec. 1, effective March 20, 2005. -- Amended 2002 Ky. Acts ch. 25, sec. 6, effective July 15, 2002. -- Created 2000 Ky. Acts ch. 163, sec. 6, effective July 14, 2000.

Legislative Research Commission Note ((3/20/2005)). KRS 393.015, the statute cited in subsection (9) of this section, was repealed by 2005 Ky. Acts ch. 173, Part XXI, sec. 2, effective March 20, 2005.