

Stricken language would be deleted from and underlined language would be added to present law.
Act 966 of the Regular Session

State of Arkansas
93rd General Assembly
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As Engrossed: H3/2/21 H4/19/21

A Bill

HOUSE BILL 1509

By: Representatives Brown, Barker, Bentley, Cavanaugh, Crawford, Dalby, C. Fite, M. Gray, Haak, Lundstrum, J. Mayberry, McKenzie, Speaks, Vaught

By: Senators J. English, Irvin, B. Davis, Bledsoe

For An Act To Be Entitled

AN ACT CONCERNING THE ARKANSAS TAX-DEFERRED TUITION SAVINGS PROGRAM; TO AMEND THE ARKANSAS TAX-DEFERRED TUITION SAVINGS PROGRAM ACT; TO ADOPT RECENT CHANGES CONTAINED IN THE INTERNAL REVENUE CODE RELATED TO THE PROGRAM; TO CHANGE THE NAME OF THE PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS TAX-DEFERRED TUITION SAVINGS PROGRAM ACT; TO ADOPT RECENT CHANGES CONTAINED IN THE INTERNAL REVENUE CODE; AND TO CHANGE THE NAME OF THE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-84-101 is amended to read as follows:
6-84-101. Title.

This chapter shall be known and may be cited as the ~~“Arkansas Tax-Deferred Tuition Savings Program Act”~~ “Arkansas Brighter Future Fund Plan Act”.

SECTION 2. Arkansas Code § 6-84-102 is amended to read as follows:
6-84-102. Purpose.

It is the intent and purpose of this chapter to create and establish



the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan pursuant to 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, to be administered by the Section 529 Plan Review Committee through the adoption of rules for the administration of the ~~program~~ plan.

SECTION 3. Arkansas Code § 6-84-103(3)-(6) concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act, are amended to read as follows:

(3) "Act" means the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan Act, § 6-84-101 et seq.;

(4)(A) "~~Arkansas Tax-Deferred Tuition Savings Program Trust~~" "Arkansas Brighter Future Fund Plan Trust" or "trust" means the trust created under § 6-84-104.

(B) Participation in the trust shall be open to Arkansas residents and nonresidents alike;

(5) "Committee" means the Section 529 Plan Review Committee, provided for in § 6-84-105, which shall oversee the administration of the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan and ensure that the ~~program~~ plan complies with the provisions of this chapter and acts in accordance with 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

(6) "Contribution" means:

(A) Any payment directly allocated to an account for the benefit of a designated beneficiary or used to pay administrative fees associated with an account; and

(B) That portion of any rollover amount treated as a contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

SECTION 4. Arkansas Code § 6-84-103(10), concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(10) "Member of the family" shall have the same meaning as is contained in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

SECTION 5. Arkansas Code § 6-84-103(12)-(15), concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act,

are amended to read as follows:

(12) "Person" means a person as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

(13) ~~"Program"~~ "Plan" means the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan established by this chapter;

(14) "Qualified higher education expenses" means tuition and other permitted expenses as set forth in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, for the enrollment or attendance of a designated beneficiary;

(15) "Qualified tuition program" means a qualified tuition program as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

SECTION 6. Arkansas Code § 6-84-103(17), concerning the definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(17) "Rollover" means a disbursement or transfer from an account that is transferred to or deposited within sixty (60) calendar days of the transfer:

(A) Into an account of the same person for the benefit of the same designated beneficiary;

(B) To the credit of another person as a designated beneficiary if the transferee account was created under this chapter or under another qualified tuition program maintained in accordance with 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020; or

(C)(i) Before January 1, 2026, into an ABLE account under 26 U.S.C. § 529A(e)(6), as in effect on January 1, ~~2018~~ 2020, of the designated beneficiary or a member of the family of the designated beneficiary.

(ii) Subdivision (17)(C)(i) of this section does not apply to so much of a distribution which, when added to all other contributions made to the ABLE account for the taxable year, exceeds the limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1, ~~2018~~ 2020.

SECTION 7. Arkansas Code § 6-84-104(a), concerning the creation of the Arkansas Tax-Deferred Tuition Savings Program Trust, is amended to read as

follows:

(a) There is created the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan Trust.

SECTION 8. Arkansas Code § 6-84-105(b) and (c), concerning the administration of the Arkansas Tax-Deferred Tuition Savings Program Act and the authority and powers of the Section 529 Plan Review Committee, are amended to read as follows:

(b) The committee shall adopt such rules as it deems necessary and proper to administer this chapter and to ensure the compliance of the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan with 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

(c) The committee shall have the following powers, duties, and functions:

(1) To establish, develop, implement, and maintain the ~~program~~ plan in a manner consistent with the provisions of this chapter and 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, and to obtain the benefits provided by 26 U.S.C. § 529 for the ~~program~~ plan, account owners, and designated beneficiaries;

(2) To adopt rules for the general administration of the ~~program~~ plan;

(3) To maintain, invest, and reinvest the funds contributed into the ~~program~~ plan consistent with the investment restrictions established by the committee and the standard of care described in the prudent investor rule under § 24-2-610; and

(4)(A) To make and enter into any and all contracts, agreements, or arrangements and to retain, employ, and contract for the services of financial institutions, depositories, consultants, broker dealers, investment advisors or managers, third-party plan administrators, and research, technical, and other services necessary or desirable for carrying out the purposes of this chapter.

(B) Contracts entered into by the committee may be for a term of from one (1) to ten (10) years.

SECTION 9. Arkansas Code § 6-84-106 is amended to read as follows:

6-84-106. Investment direction.

Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~

2020, no person shall have the right to direct the investment of any contributions to or earnings from the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan.

SECTION 10. Arkansas Code § 6-84-107(a)(1), concerning accounts under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(a)(1) An account owner or contributor may establish an account by making an initial contribution to the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan, signing an application form approved by the Section 529 Plan Review Committee and naming the account owner and the designated beneficiary.

SECTION 11. Arkansas Code § 6-84-107(c) and (d), concerning accounts under the Arkansas Tax-Deferred Tuition Savings Program Act, are amended to read as follows:

(c) Total contributions to all accounts shall not exceed those reasonably necessary to provide for the qualified higher education expenses of the beneficiary, and the committee shall establish maximum contribution limits applicable to ~~program plan~~ plan accounts.

(d) Separate records and accounting shall be required by the ~~program~~ plan for each account, and reports shall be made no less frequently than annually to the account owner.

SECTION 12. Arkansas Code § 6-84-107(e)(1), concerning savings accounts under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(e)(1) The ~~program plan~~ shall be permitted to collect application, account, or administrative fees to defray the costs of the ~~program plan~~ plan.

SECTION 13. Arkansas Code § 6-84-108(b), concerning the naming of a designated beneficiary and transfers of accounts under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(b) At the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the

transferee account if the transferee account was created by this chapter or under another qualified tuition program maintained in accordance with 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

SECTION 14. Arkansas Code § 6-84-109(b)(2), concerning the reporting of account withdrawals under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(2) The report shall be made at the time required by the rules of the Internal Revenue Service as in effect on January 1, ~~2018~~ 2020, and contain such information as is required by law.

SECTION 15. Arkansas Code § 6-84-111(a)(1), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(a)(1) Except as otherwise indicated in this chapter, interest, dividends, and capital gains from funds invested in the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, shall be exempt from Arkansas income taxes.

SECTION 16. Arkansas Code § 6-84-111(b)(1), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(b)(1) ~~For tax years beginning on or after January 1, 2005,~~ Contributions to a tuition savings account established under this ~~program~~ plan may be deducted from the taxpayer's adjusted gross income for the purpose of calculating Arkansas income tax under § 26-51-403(b).

SECTION 17. Arkansas Code § 6-84-111(b)(3), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(3) Contributions to this ~~program~~ plan that have been deducted from the taxpayer employee's adjusted gross income for prior tax years shall be subject to recapture from the taxpayer employee if the taxpayer employee:

(A) Makes a subsequent nonqualified withdrawal from the account; or

(B) Rolls the account over to a tax-deferred tuition savings program established by another state or institution under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

SECTION 18. Arkansas Code § 6-84-111(c)(1)(A), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(c)(1)(A) For tax years beginning on or after January 1, 2017, contributions to a tuition savings account established under this ~~program~~ plan or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as it existed on January 1, 2017, may be deducted from the taxpayer's adjusted gross income for the purpose of calculating Arkansas income tax under § 26-51-403(b).

SECTION 19. Arkansas Code § 6-84-111(d)(1)(A), concerning funds exempt from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as follows:

(d)(1)(A) For tax years beginning on or after January 1, 2018, contributions to a tuition savings account established under the ~~program~~ plan or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as it existed on January 1, 2018, may be deducted from the taxpayer's adjusted gross income for the purpose of calculating Arkansas income tax under § 26-51-403(b).

SECTION 20. Arkansas Code § 6-84-111(e) and (f), concerning withdrawals from and earnings on contributions to the Arkansas Tax-Deferred Tuition Savings Program Act, are amended to read as follows:

(e)(1)(A) For tax years beginning on and after January 1, 2021, contributions to a tuition savings account established under the plan or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, 2020, may be deducted from the taxpayer's adjusted gross income for the purpose of calculating Arkansas income tax under § 26-51-403(b).

(B) A taxpayer may not deduct from the taxpayer's adjusted gross income a contribution to a tax-deferred tuition savings program established by another state if the taxpayer deducted the contribution in

another state or on another state's income taxes.

(2)(A) The deductible contributions for a tuition savings account established under this chapter shall not exceed five thousand dollars (\$5,000) per taxpayer in any tax year.

(B) If the aggregate amount of contributions by a taxpayer during a tax year exceeds the limitation under subdivision (e)(2)(A) of this section, the unused aggregate amount may be carried forward to the next succeeding four (4) tax years.

(C) The deductible contributions for a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, 2020, shall not exceed three thousand dollars (\$3,000) per taxpayer in any tax year.

(D) The deductible contributions for a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, 2020, that are rolled over into a tuition savings account established under this chapter shall not exceed seven thousand five hundred dollars (\$7,500) per taxpayer in the tax year in which they were rolled.

(f)(1) Qualified withdrawals from a tuition savings account established under this ~~program plan~~ or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, will be exempt from Arkansas income tax with respect to the designated beneficiary's income.

(2)(A) Nonqualified withdrawals from a tuition savings account established under this ~~program plan~~ or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, will be subject to Arkansas income tax.

(B) The nonqualified withdrawal will be taxable to the party, account owner, or designated beneficiary who actually makes the withdrawal.

~~(f)~~(g) Any earnings on the contribution that are included in the refund will be subject to Arkansas income tax if an account owner receives a refund of contributions to a tuition savings account established under this ~~program plan~~ or a tax-deferred tuition savings program established by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, because of either:

- (1) The death or disability of the designated beneficiary; or
- (2) A scholarship, allowance, or payment described in 26 U.S.C. § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, 2018, received by the designated beneficiary.

SECTION 21. Arkansas Code § 6-84-112 is amended to read as follows:

6-84-112. Limitation on liability.

Neither the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan, the Section 529 Plan Review Committee and each of its members, nor the state shall insure any account or guarantee any rate of return or any interest rate on any contribution, nor shall they or any one of them be liable for any loss incurred by any person as a result of participating in the ~~program plan~~.

SECTION 22. Arkansas Code § 6-84-113 is amended to read as follows:

6-84-113. Liberal construction.

This chapter shall be liberally construed to comply with the requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

SECTION 23. Arkansas Code § 6-84-114(c), concerning the Aspiring Scholars Matching Grant Program, is amended to read as follows:

(c) An Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan account shall be exempt for purposes of determining eligibility for transitional employment assistance, Medicaid, and food stamps, provided that the federal rules for these programs permit such an exemption.

SECTION 24. Arkansas Code § 19-4-1602(21), concerning authorized deductions from the payrolls of state employees, is amended to read as follows:

(21)(A) Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan under the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan Act, § 6-84-101 et seq., or a tax-deferred savings program established by another state under 26 U.S.C. § 529, as it existed on January 1, 2007.

(B) The tax-deferred savings plan must be in existence at the time the payroll deduction request is made.

(C) The state employee shall provide information on his or her Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan account to the Department of Finance and Administration so that the payroll deduction can be credited to the appropriate account; and

SECTION 25. Arkansas Code § 26-51-403(b)(17), concerning the deductions subtracted from a taxpayer's gross income to arrive at the taxpayer's adjusted gross income, is amended to read as follows:

(17) Deductions for contributions to the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan not to exceed five thousand dollars (\$5,000) per taxpayer under § 6-84-111(b).

SECTION 26. Arkansas Code § 26-51-2509(a) and (b), concerning the check-off program for the Arkansas Tax-Deferred Tuition Savings Program, are amended to read as follows:

(a)(1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, a designation as follows:

"If you are entitled to a refund, check if you wish to designate [] \$25, [] \$50, [] \$100, [] (write in amount) or [] all of your tax refund to an Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan account. Your refund will be reduced by this amount."

(2) The Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan account must already be in existence at the time the election in subdivision (a)(1) of this section is made, and the pertinent information regarding the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan account must be provided to the Department of Finance and Administration so that the deposit can be correctly made.

(b) The Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan check-off program on state income tax returns shall be effective beginning with the returns for the 2009 tax year and each subsequent tax year.

/s/Brown

APPROVED: 4/27/21