

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 539

By: Senators B. Johnson, J. Hendren

By: Representative Bragg

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS TAX CREDIT SCHOLARSHIP
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS TAX CREDIT
SCHOLARSHIP ACT.

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

SECTION 1. Arkansas Code Title 6, Chapter 18, is amended to add an additional subchapter to read as follows:

Subchapter 20 – Arkansas Tax Credit Scholarship Act

6-18-2001. Title.

This subchapter shall be known and may be cited as the "Arkansas Tax Credit Scholarship Act".

6-18-2002. Findings and intent.

The General Assembly finds that:

(1) Each child in this state should have an opportunity to receive an appropriate education that fits his or her needs regardless of income or the neighborhood in which he or she lives;

(2) A parent or legal guardian should be able to make educational decisions for his or her child;

(3) An appropriate educational setting that fits a child's individual needs is important to the civic and economic condition of the



state;

(4) Providing an appropriate educational opportunity to each child in this state is a paramount concern of the General Assembly; and

(5) It is the intent of the General Assembly to ensure that resources are available to give families the means and the opportunity to provide children with an appropriate education.

6-18-2003. Definitions.

As used in this subchapter:

(1) "Curriculum" means a complete course of study for a particular content area or grade level;

(2) "Educational service provider" means a provider of eligible educational services under § 6-18-2008;

(3) "Eligible contribution" means a monetary contribution from an eligible taxpayer or corporation, subject to the restrictions under this act, to an eligible student support organization;

(4) "Eligible student" means a resident of this state who:

(A) Is receiving an education scholarship for the first time and is:

(i) Entering kindergarten through grade nine (K-9) in an approved nonpublic school; or

(ii) Transferring from a public school at which the student was enrolled for at least one (1) semester immediately preceding the first semester for which the student receives a student scholarship under this subchapter to an approved kindergarten through grade twelve (K-12) nonpublic school;

(B) Has a family income that is no more than one and one-half (1 1/2) the amount that qualifies a student for a free or reduced-price meal under the National School Lunch Act, 42 U.S.C. § 1751 et seq., as in effect on January 1, 2019, unless the student is eligible solely because the public school district is participating in the special assistance certification and reimbursement alternative implemented under 42 U.S.C. § 1759(a), as it existed on January 1, 2019;

(C) Has an individualized education program in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as it existed on January 1, 2019 or an individualized service plan in

accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1412(a)(10), as it existed on January 1, 2019;

(D) Is eligible to participate in the Succeed Scholarship Program under § 6-41-901 et seq.;

(E) Has a parent who is a member of the United States National Guard or a parent who is a member of the Armed Forces and is on active duty or was killed in the line of duty; or

(F) Is in foster care or has been in the foster care system and achieved permanency through adoption, reunification, or permanent guardianship.

(5) "Eligible student support organization" means a charitable organization that:

(A) Is exempt from federal income tax under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code, as in effect on January 1, 2019;

(B) Is an Arkansas entity that is formed under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;

(C) Is certified by the Office of the Treasurer under § 6-18-2004;

(D) Complies with the operational requirements under § 6-15-2005; and

(E) Receives eligible contributions to fund and administer student scholarships according to the rules prescribed by this act;

(6) "Institution of higher education" means a public or private institution that provides postsecondary education;

(7) "Operator" means:

(A) A president, officer, or board member of an eligible student support organization or a person with equivalent decision-making authority over an eligible student support organization; or

(B) An owner or other person with equivalent decision-making authority over an educational service provider that receives payment under § 6-18-2008 from student scholarships;

(8) "Parent" means an individual who is the parent or legal guardian of an eligible student; and

(9) "Student scholarship" means the sum of funds established for an eligible student under this act that a parent may use to pay for tuition and other approved educational services on behalf of the eligible student.

6-18-2004. Application to become an eligible student support organization.

(a)(1) An organization that seeks to become an eligible student support organization under this act shall apply to the Office of the Treasurer for initial certification or renewal of certification as an eligible student support organization by May 1 of the year before the school year for which the organization intends to fund student scholarships.

(2) However, for the 2020-2021 school year, an organization that seeks to become an eligible student support organization under this act shall apply to the office for initial certification or renewal of certification as an eligible student support organization by January 1, 2020.

(b)(1) An application for initial certification under subsection (a) of this section shall include:

(A) A copy of the organization's incorporation documents under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;

(B) A copy of the organization's Internal Revenue Service determination letter as a nonprofit organization under 26 U.S.C. § 501(c)(3);

(C) A description of the organization's:

(i) Financial plan that demonstrates sufficient funds to operate throughout the academic year; and

(ii) Organizational chart; and

(D) A description of the:

(i) Methodology the organization will use to verify whether a student is eligible to receive a student scholarship;

(ii) Application process the organization will use;

(iii) Methodology the organization will use to establish and fund student scholarships; and

(iv) Plans to comply with the operational requirements under § 6-18-2005.

(2) In addition to the information required under subdivision (b)(1) of this section, an application for renewal of certification shall include:

(A) The eligible student support organization's completed Internal Revenue Service Form 990 that is submitted to the office no later than November 30 of the year before the academic year in which the eligible

student support organization intends to fund student scholarships;

(B) A copy of the audit required under § 6-18-2010; and

(C) An annual report that includes the number of:

(i) Applications the eligible student support organization received, by county and by grade;

(ii) Applications the eligible student support organization received and approved from students who met income requirements under § 6-18-2003(4)(A); and

(iii) Student scholarships the eligible student support organization established on behalf of eligible students;

(D) The amount of funds that the eligible student support organization:

(i) Received for the purposes of this subchapter;

and

(ii) Distributed as student scholarships under this

act;

(E) An accounting of any remaining funds after the distribution of student scholarships and administrative expenses; and

(F) A description of how the eligible student support organization has complied with the operational requirements under § 6-18-2005.

(c) Within sixty (60) days after receipt of an application under this section, the office shall certify an organization as an eligible student support organization if the organization meets the requirements under subsection (b) of this section.

(d) The office shall maintain a public registry of currently certified eligible student support organizations on the office’s website.

6-18-2005. Operation of an eligible student support organization.

(a) An eligible student support organization:

(1)(A) May expend up to ten percent (10%) of eligible contributions under § 26-51-515 for administrative expenses.

(B) An eligible student support organization shall expend or reserve for student scholarships under this subchapter an amount equal to or greater than seventy-five percent (75%) of eligible contributions under § 26-51-515 during the fiscal year or school year in which the eligible

contributions are collected.

(C) No more than twenty-five percent (25%) of eligible contributions under § 26-51-515 shall be carried forward to the following fiscal year.

(3) Shall not:

(A) Discriminate among applications for a student scholarship on the basis of gender, national origin, race, ethnicity, religion, or disability;

(B) Have an operator or employee who owns, operates, or is employed by an educational service provider that receives a payment for services from student scholarships under § 6-18-2008;

(C) Provide a student scholarship under this act for the child of an operator or employee of the eligible student support organization;

(D) Allow a donor to designate an eligible contribution for a specific student beneficiary, school, or expense under § 6-18-2008(a) as a condition of an eligible contribution to the eligible student support organization;

(E) Restrict the parent of an eligible student from selecting any approved nonpublic school; or

(F) Charge an application fee;

(4)(A) May transfer funds to another eligible student support organization if the:

(i) Office of the Treasurer approves the transfer;

and

(ii) Receiving eligible student support organization requires additional funds to meet its student scholarship demands.

(B) A transfer under subdivision (a)(4)(A) of this section is limited to the greater of five-hundred thousand dollars (\$500,000) or twenty percent (20%) of the total eligible contributions received by the eligible student support organization that is making the transfer.

(C) All transferred funds received by an eligible student support organization under subdivision (a)(4)(A) of this section shall be:

(i) Deposited by the receiving eligible student support organization into the receiving eligible student support organization's account for student scholarships; and

(ii) Separately disclosed in the receiving eligible student support organization's annual financial audit under § 6-18-2010;

(5) Shall:

(A) Maintain separate accounts for student scholarship funds and operating funds;

(B) Prepare quarterly reports to submit to the office and to post on the receiving eligible student support organization's website;

(C) Submit in a timely manner any information requested by the office that relates to a student scholarship that is established by the eligible student support organization under this subchapter, including without limitation information that is requested in support of any evaluation of the student scholarship program established by this act that is authorized by the state;

(D)(i) Establish a process by which an individual may notify the eligible student support organization and file a written complaint of any violation of this act by a parent, educational service provider, or public school district.

(ii) The eligible student support organization shall:

(a) Conduct an inquiry of any written complaint under subdivision (a)(5)(D)(i) of this section; or

(b) Make a referral to the appropriate agency for an investigation into any complaint under subdivision (a)(5)(D)(i) of this section; and

(E) Allocate all interest accrued from eligible contributions to the funding of student scholarships.

(b)(1) The office shall send written notice to an eligible student support organization if the office determines that the eligible student support organization has violated this act.

(2)(A) An eligible student support organization that receives a notice under subdivision (b)(1) of this section has sixty (60) days to correct a violation identified in the notice by the office.

(B)(i) If an eligible student support organization fails or refuses to correct a violation identified under subdivision (b)(1) of this section, then the office may revoke the certification of the eligible student support organization.

(ii)(a) An eligible student support organization may request an administrative hearing under the Arkansas Tax Procedure Act, § 26-18-101 et seq., upon the revocation of the eligible student support organization's certification.

(b) A final decision issued by the office under this subdivision (b)(2)(B) of this section is subject to judicial review.

(3)(A) An eligible student support organization whose certification has been revoked under subdivision (b)(2)(B)(i) of this section shall not accept any further eligible contributions made to the eligible student support organization for the purpose of funding student scholarships under this act.

(B) If an eligible student support organization receives any eligible contributions made for the purpose of funding student scholarships under this act after the date of the notice of the revocation of its certification under subdivision (b)(2)(B)(i) of this section, then the eligible student support organization shall refund the eligible contributions.

(c)(1) If an eligible student support organization determines that it cannot continue to operate, then it shall transfer its funds to another eligible student support organization upon approval by the office.

(2) If funds are available, an eligible student support organization that receives a transfer of funds under subdivision (c)(1) of this section shall oversee the student scholarships established by the eligible student support organization that transferred the funds.

6-18-2006. Establishment of student scholarships – Payments.

(a) An eligible student support organization may contract with institutions that are qualified to manage student scholarships.

(b) An eligible student support organization shall:

(1) Establish student scholarships under this act for eligible students in an amount not to exceed the foundation funding amount under § 6-20-2305(a)(2) for each academic year in which the eligible students participate in the program;

(2) Disburse student scholarships established under subdivision (b)(1) of this section in quarterly installments throughout the academic year

to parents of eligible students; and

(3) Establish a system for parents to direct student scholarship funds received under subdivision (b)(2) of this section to nonpublic schools and educational service providers by:

(A) Electronic funds transfer;

(B) Automated clearing house transfer; or

(C) Another system that the eligible student support organization determines is commercially viable, cost-effective, and efficient for parents to use.

(c) Funds received under this act are not taxable income of a parent or an eligible student.

6-18-2007. Application for student scholarship.

(a) A parent may apply to an eligible student support organization to establish a student scholarship for his or her eligible student.

(b) An eligible student support organization shall approve an application for a student scholarship upon:

(1) Verifying that the student on whose behalf the parent is applying is eligible; and

(2) Entering into an agreement with a parent under subdivision (d)(1) of this section.

(c) The eligible student support organization:

(1) Shall approve applications by order of receipt;

(2) Shall approve an application only if funds are available;

and

(3) May approve applications throughout the calendar year.

(d) As part of the application process under this section, a parent shall:

(1) Enter into an agreement with an eligible student support organization:

(A) To use student scholarship funds for only the allowed expenses under § 6-18-2008;

(B)(i) Not to enroll the eligible student full-time in a public school.

(ii) A parent who uses student scholarship funds for contracted services from a public school district under § 6-18-2008(a)(7) is

not in violation of the agreement under subdivision (d)(1)(B)(i) of this section;

(C) Not to accept a Succeed Scholarship under § 6-41-901 et seq.; and

(D) To provide to the eligible student an organized and appropriate educational program with measurable annual goals; and

(2) Sign a form verifying that he or she has reviewed information developed by the Office of the Treasurer that explains without limitation:

(A) The allowable uses of student scholarship funds;

(B) The responsibilities of:

(i) Parents;

(ii) Eligible student support organizations; and

(iii) The office;

(C) That a parent may choose to enroll his or her child in a public school at any time; and

(D) Parental placement under the Individuals with Disabilities Education Act, 20 U.S.C. § 1412(a)(10)(A), as it existed on January 1, 2019, for students with disabilities as described in § 6-18-2003(4)(B).

(e)(1) An eligible student support organization shall annually renew an eligible student's student scholarship if funds are available and if the parent of the eligible student applies for re-enrollment.

(2) As part of the re-enrollment process under subdivision (e)(1) of this section, the eligible student support organization or an organization chosen by the eligible student support organization shall conduct a parental survey that asks parents of participating eligible students to detail:

(A) Satisfaction with the student scholarship program administered by the eligible student support organization;

(B) Opinions regarding other topics and issues that concern the effectiveness of the student scholarship program administered by the eligible student support organization; and

(C) The number of years his or her eligible student has participated in the student scholarship program administered by the eligible student support organization.

6-18-2008. Student scholarships.

(a)(1) The Arkansas Tax Credit Scholarship is established under this subchapter.

(2) An eligible student support organization may finance student scholarships for students who meet the eligibility requirements under this subchapter.

(b) A parent shall use student scholarship funds received from an eligible student support organization on behalf of an eligible student to remit payments to a nonpublic school or an educational service provider for only the following expenses of the eligible student:

(1) Tuition, fees, or required uniforms for a nonpublic:

(A) School in this state that meets the eligibility requirements under § 6-18-2011; or

(B) Online learning program or course;

(2) Textbooks required by a nonpublic school;

(3) Tutoring services provided by a:

(A) Teacher who is licensed by the State Board of Education;

(B) Person qualified under § 6-15-1004 and state board rules as a substitute teacher;

(C) Person who has experience teaching at an institution of higher education; or

(D) Tutoring facility with a business license to operate in this state;

(4) Curriculum, including without limitation any required supplemental materials;

(5) Fees for:

(A) Nationally standardized assessments, including without limitation assessments required by the state board of all public students and national norm-referenced exams;

(B) Advanced Placement exams;

(C) College placement examinations, including without limitation the ACT and the SAT;

(D) Industry certification examinations; and

(E) Other assessments necessary to complete an eligible

student's course of study;

(6) Fees for specialized after-school or summer education programs whose primary purpose is to provide academic instruction;

(7)(A) Contracted services that are provided by a public school district, including without limitation academic courses and extracurricular programs.

(B) A public school district that contracts with an eligible student support organization under subdivision (a)(7)(A) of this section and under § 6-18-232 shall charge an amount that is not more than one-sixth (1/6) of the state foundation funding amount under § 6-20-2305(a)(2) for each academic course in which the student is enrolled, as described under § 6-18-232;

(8) Tuition and fees at an institution of higher education if the eligible student is enrolled in high school and an academic course at an institution of higher education;

(9) Textbooks and materials related to coursework at an institution of higher education;

(10) Specialized services that are necessary to facilitate an eligible student's education, including without limitation:

(A) Applied behavior analysis services as defined in § 23-99-418;

(B) Speech-language pathology services as defined in § 17-100-103;

(C) Occupational therapy services as defined in § 17-88-102;

(D) Physical therapy services as defined in § 17-93-102;

(E) Audiology services as defined in § 17-100-103;

(F) Dyslexia support; and

(G) Other services approved by the Office of the Treasurer;

(11)(A) Transportation required for travel to and from an educational service provider.

(B) Student scholarship funds used for expenses related to transportation under subdivision (a)(11)(A) of this section shall not exceed ten percent (10%) of the student scholarship funds provided under § 6-18-2006 for that academic year; and

(12) Any other educational expense approved by an eligible student support organization.

(c) A nonpublic school or educational service provider that receives payments under this section shall not share with, refund to, or rebate payments under this section to a parent or eligible student other than to credit a refund directly to the account that contains the eligible student's student scholarship funds.

6-18-2009. Duration of the program – Return of funds.

(a) If funds are available, an eligible student support organization shall continue to provide student scholarship funds to an eligible student under § 6-18-2006 until:

(1) The parent does not apply under § 6-18-2007 to renew the student scholarship;

(2) The eligible student support organization determines that the student no longer qualifies as an eligible student;

(3) The parent fails to comply with the agreement made under § 6-18-2007(d)(1);

(4)(A) The eligible student enrolls in a public school.

(B)(i) A parent shall immediately notify the eligible student support organization if his or her eligible student enrolls full-time in a course of study at a public school.

(ii) If an eligible student enrolls in a public school, the eligible student support organization shall place the student scholarship in an inactive status for a maximum period of one (1) academic year, during which time the student scholarship funds shall be frozen.

(iii) After one (1) academic year of inactive status under subdivision (a)(4)(B)(ii) of this section, an eligible student support organization shall:

(a) Return the student scholarship funds to active status if the:

(1) Parent notifies the eligible student support organization that the student is no longer enrolled in a public school; and

(2) Student continues to meet the eligibility requirements under this act; or

(b) Close the student scholarship if the:

(1) Parent does not notify the eligible student support organization that the student is no longer enrolled in a public school; or

(2) Student ceases to meet the eligibility requirements under this act;

(5) The participating eligible student graduates from high school; or

(6) The Office of the Treasurer:

(A) Suspends or revokes the student scholarship; or

(B)(i) Deems a parent of a participating eligible student ineligible for the student scholarship program under this act upon a finding of fraud or abuse of student scholarship funds, including without limitation accepting a refund or rebate in violation of § 6-15-2008(b).

(ii) The Treasurer shall establish procedures to ensure a fair process to determine whether intentional or substantial misuse of funds has occurred under this act.

(iii) The Treasurer may refer cases of intentional or substantial misuse of funds to law enforcement agencies for investigation if evidence of the misuse is obtained.

(iv) A parent may appeal to the the Treasurer's decision to suspend or revoke a student scholarship or deem a parent ineligible for the student scholarship program under subdivisions (a)(6)(A) and (a)(6)(B)(i) of this section.

(b) If a student's remaining student scholarship funds are no longer eligible for expenditure under this act, any remaining student scholarship funds shall be returned to the eligible student support organization that contributed the funds to the eligible student's account.

6-18-2010. Audit.

(a) By October 1 of each year, an eligible student support organization shall have an annual financial audit of its accounts and records of the previous fiscal year conducted in accordance with generally accepted auditing standards by an independent certified public accountant who is licensed in this state.

(b) An eligible student support organization shall provide to the

Office of the Treasurer a copy of the audit required under subsection (a) of this section within thirty (30) days of receiving the audit.

6-18-2011. Nonpublic school eligibility.

(a) A nonpublic school shall notify the Department of Education of its intent to participate in the student scholarship program under this act.

(b) The department shall approve a nonpublic school as eligible to participate in the student scholarship program under this act if the nonpublic school:

(1) Either:

(A) Meets the accreditation requirements established by the State Board of Education, the Arkansas Nonpublic School Accrediting Association, Inc. or its successor, or another accrediting association that is recognized by the state board; or

(B)(i) Is an associate member of or has applied for accreditation by the Arkansas Nonpublic School Accrediting Association, Inc. or its successor or another accrediting association that is recognized by the state board.

(ii) A nonpublic school shall not be eligible if:

(a) The nonpublic school has not received accreditation within four (4) years of becoming eligible under subdivision (b)(1)(B)(i) of this section;

(b) The accrediting association determines that the nonpublic school is ineligible or unable to continue the accreditation process; or

(c) It becomes impossible for the nonpublic school to obtain accreditation within four (4) years.

(iii) A nonpublic school that becomes ineligible under subdivision (b)(1)(B)(ii) of this section shall regain eligibility if the nonpublic school receives accreditation under subdivision (b)(1)(A) of this section;

(2)(A) Demonstrates fiscal soundness by:

(i) Having been in operation for one (1) school year; or

(ii) Providing the department with a statement by an independent certified public accountant confirming that the nonpublic school

is insured and has sufficient capital or credit to operate in the upcoming school year.

(B) In lieu of a statement under subdivision (b)(2)(A)(ii) of this section, a surety bond or letter of credit for the amount equal to the aggregate amount of contributions expected to be received during the school year may be filed with the department;

(3) Complies with the antidiscrimination provisions of 42 U.S.C. § 1981;

(4) Meets state and local health and safety requirements;

(5) Employs or contracts with teachers who hold baccalaureate or higher degrees; and

(6) Complies with all state laws and rules that govern nonpublic schools.

(c) The department shall maintain a list of nonpublic schools that are eligible to participate in the student scholarship program under this act and make the list available on the department's website.

(d)(1) An eligible nonpublic school under this section shall administer annually or make provisions for a participating eligible student to take a nationally recognized norm-referenced test as established by the state board.

(2) A student with an individualized service program that provides for an exemption to standardized testing is not required to take a test administered under subdivision (d)(1) of this section.

6-18-2012. Annual report.

(a)(1) In compliance with student privacy laws, the Office of the Treasurer or an organization appointed by the office shall produce an annual report that is accessible on the office's website.

(2) Annual report findings shall be aggregated according to a student's grade level, gender, family income level, race, and number of years of participation in the student scholarship program under this act.

(b) The annual report required under subdivision (a)(1) of this section shall:

(1) Assess:

(A) Student performance on state achievement tests or nationally norm-referenced tests, including without limitation learning

gains;

(B) High school graduation rates;

(C) Parental satisfaction according to the survey conducted under § 6-18-2007(e)(2); and

(D) The percentage of funds used for each expense type identified in § 6-18-2008(a);

(2) Apply appropriate analytical behavioral science methodologies to ensure public confidence in the report; and

(3) Protect the identity of participating eligible students and schools using methods that include without limitation keeping anonymous all disaggregated data.

§ 6-18-2013. Autonomy of nonpublic schools and educational service providers.

(a) A nonpublic school or educational service provider that receives payment from student scholarships under this act is not an agent or an instrumentality of the state or of a public school district.

(b) The curriculum and educational plan for an eligible student who attends a nonpublic school or who receives educational services from an educational service provider under this act are not subject to the regulatory authority of the State Board of Education.

(c) As a condition of continued receipt of student scholarship funds, the state board may require a nonpublic school or educational service provider that receives payments from student scholarship funds to certify on a semiannual basis under oath that a participating eligible student has been:

(1) Attending and is enrolled in the nonpublic school, except for excused absences; or

(2) Receiving educational services from an educational service provider.

§ 6-18-2014. Rules.

The Office of the Treasurer shall promulgate rules to implement this act.

SECTION 2. Arkansas Code § 6-18-232 is amended to read as follows:

6-18-232. Enrollment of private school or home school or Arkansas Tax

Credit Scholarship Act students.

(a) A public school district or an open-enrollment public charter school may adopt a policy to allow a student who attends a private school or a home school or is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship Act, § 6-18-2001 et seq., to enroll in an academic course at a public school or an open-enrollment public charter school if the student who attends a private school or a home school or is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship Act, § 6-18-2001 et seq., resides in the public school district where the public school or open-enrollment public charter school is located.

(b) A policy adopted by a public school district or open-enrollment public charter school under subsection (a) of this section may:

(1) Set admissions criteria determined by the public school district or open-enrollment public charter school;

(2) Allow a student who attends a private school or a home school or is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship Act, § 6-18-2001 et seq., to enroll in one (1) or more academic courses in a semester; and

(3) Limit enrollment:

(A) To certain academic courses or grade levels; or

(B) Based on other criteria determined by the public school district or open-enrollment public charter school.

(c)(1) A public school district or an open-enrollment public charter school that enrolls a student who attends a private school or a home school or is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship, § 6-15-3001 et seq., in an academic course is entitled to an amount equal to one-sixth (1/6) of the state foundation funding amount for each academic course in which a student who attends a private school or a home school or is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship, § 6-15-3001 et seq., is enrolled.

(2) A public school district or an open-enrollment public charter school is not entitled to more than the equivalent of the state foundation funding amount for one (1) average daily membership per student regardless of the number of academic courses in which the student who attends a private school or a home school or is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship Act, § 6-18-2001 et

seq., is enrolled.

(3) A student who is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship Act, § 6-18-2001 et seq., shall pay for the academic course in which he or she is enrolled under this section using the student scholarship funds disbursed under the Arkansas Tax Credit Scholarship Act, § 6-18-2001 et seq.

(d) This section does not require a public school district or an open-enrollment public charter school to allow a student who attends a private school or a home school or is the recipient of a student scholarship under the Arkansas Tax Credit Scholarship Act, § 6-18-2001 et seq., to enroll in an academic course at a public school or an open-enrollment public charter school.

SECTION 3. Arkansas Code Title 26, Chapter 51, Subchapter 5, is amended to add an additional section to read as follows:

26-51-515. Tax credits for a contribution to a student scholarship.

(a) As used in this section:

(1) "Eligible student support organization" means the same as defined in § 6-18-2003(5); and

(2) "Eligible taxpayer" means an individual or business, including without limitation a:

(A) Corporation;

(B) Partnership;

(C) Limited liability company; and

(D) Sole proprietorship.

(b) A state income tax credit is allowed against the taxes imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for one hundred percent (100%) of an eligible contribution made by an eligible taxpayer in a tax year to an eligible student support organization at the time of the eligible contribution.

(c)(1) A state income tax credit under this section shall not exceed an eligible taxpayer tax due under this chapter for the taxable year after the application of any other allowable state income tax credits by the eligible taxpayer.

(2) Beginning with tax year 2019, the total amount of state income tax credits under this section and state income tax credits carried

forward under this section shall not exceed three million dollars (\$3,000,000).

(d) An eligible taxpayer who files a consolidated corporate income tax return as a member of an affiliated group under § 26-51-805 may be allowed the state income tax credit under this section on a consolidated return basis subject to the limitations established under subsection (c) of this section.

(e) Spouses who file separate returns for a tax year in which they could have filed a joint return may each claim only one-half (1/2) of the state income tax credit that would have been allowed for a joint return under this section.

(f)(1) Any unused state income tax credit under this section may be carried forward for five (5) consecutive years following the tax year in which the state income tax was earned.

(2) An eligible taxpayer who seeks to carry forward an unused amount of the state income tax credit under this section shall submit an application for allocation of tax credits or carry forward credits in the year that the eligible taxpayer intends to use the carry forward credits.

(3) An eligible taxpayer shall not convey, assign, or transfer the state income tax credit under this section to another entity unless all of the assets of the eligible taxpayer are conveyed, assigned, or transferred in the same transaction.

(g) For purposes of this section, an eligible contribution for which a state income tax credit is claimed that is made on or before the fifteenth day of the fourth month following the close of the tax year applies to either the current or preceding tax year and is considered to have been made on the last day of the tax year.

(h)(1) An eligible taxpayer may rescind all or part of the eligible taxpayer's allocated state income tax credit under this section.

(2) The amount rescinded under subdivision (h)(1) of this section shall become available:

(A) For purposes of the cap for the state fiscal year under this section, to an eligible taxpayer upon approval by the Department of Finance and Administration that the rescission has been accepted by the Department of Finance and Administration and the eligible taxpayer has not previously rescinded any or all of the eligible taxpayer's allocated state income tax credit under this section more than one (1) time in the previous

three (3) tax years; and

(B) To an eligible taxpayer on a priority basis based on state income tax credit applications received after the date the rescission is accepted by the Department of Finance and Administration.

(i) An application for a state income tax credit under this section shall be submitted to the Department of Finance and Administration on forms established by rule of the Office of the Treasurer.

(j) The Office of the Treasurer shall develop a cooperative agreement to assist in the administration of this section.

(k) The Department of Finance and Administration shall adopt rules necessary to administer this section, including without limitation rules governing the allocation of state tax credits and carry forward credits under this section on a first-come, first-served basis.

SECTION 4. EFFECTIVE DATE. This act is effective for tax years beginning on or after January 1, 2019.