

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 680

By: Senators J. Dismang, B. Ballinger, Beckham, A. Clark, T. Garner, Hester, Gilmore, Hill, Irvin, B. Johnson, M. Johnson, Rapert, J. English, Flippo, D. Wallace, B. Sample
By: Representative Bragg

For An Act To Be Entitled

AN ACT TO CREATE A TAX CREDIT FOR ELIGIBLE CONTRIBUTIONS MADE TO A SPONSOR-GRANTING ORGANIZATION UNDER THE PHILANTHROPIC INVESTMENT IN ARKANSAS KIDS PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE A TAX CREDIT FOR ELIGIBLE CONTRIBUTIONS MADE TO A SPONSOR-GRANTING ORGANIZATION UNDER THE PHILANTHROPIC INVESTMENT IN ARKANSAS KIDS PROGRAM.

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 22 – Philanthropic Investment in Arkansas Kids Program Act

6-18-2201. Title.

This subchapter shall be known and may be cited as the "Philanthropic Investment in Arkansas Kids Program Act".

6-18-2202. Definitions.

As used in this subchapter:

(1) "Educational scholarship" means a grant to a qualified student that covers all or part of the tuition and fees at a private school;



(2) "Eligible contribution" means a monetary contribution from a taxpayer to a scholarship-granting organization or an amount prorated to be contributed to the scholarship-granting organization under § 6-18-2208;

(3) "Qualified student" means a student who:

(A) Is eligible to attend a public school in this state;

(B) Has an annual family income that is less than or equal to two hundred percent (200%) of the federal poverty guidelines as determined annually in the Federal Register by the United States Department of Health and Human Services under 42 U.S.C. § 9902(2); and

(C) Either:

(i) Was enrolled on a full-time basis in a public school in this state in the previous school year;

(ii) Is enrolling in kindergarten through grade twelve (K-12) in the state for the first time;

(iii) Was enrolled in a private school in the state and received an educational scholarship from a scholarship-granting organization under this subchapter in the previous school year; or

(iv) Was:

(a) Residing in another state during the previous school year before enrollment in a private school in this state;

(b) Not the recipient of an educational scholarship from a scholarship-granting organization under this subchapter; and

(c) Not attending a private school in the state for more than one-half (1/2) of the school year before the year in which the qualified student is applying for an educational scholarship from a scholarship-granting organization under this subchapter;

(4) "Scholarship-granting organization" means an organization that:

(A) Complies with the requirements of this subchapter;

(B) Receives eligible contributions that qualify eligible taxpayers for tax credits under this subchapter; and

(C) Provides educational scholarships under this subchapter to qualified students attending private schools without limiting the availability of educational scholarships to qualified students of only one (1) school; and

(5) "Taxpayer" means a resident individual or business, including without limitation:

(A) Two (2) taxpayers who are eligible to file a joint federal income tax return;

(B) A domestic or foreign corporation;

(C) A partnership;

(D) A Subchapter S corporation;

(E) Another similar pass-through entity, estate, or trust;

and

(F) A partner, member, or Subchapter S corporation shareholder of a pass-through entity, estate, or trust.

6-18-2203. Creation.

There is created the Philanthropic Investment in Arkansas Kids Program.

6-18-2204. Eligible taxpayer contributions.

(a)(1) For tax years beginning on and after January 1, 2022, a taxpayer may claim a state income tax credit against the taxes imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for one hundred percent (100%) of eligible contributions made to a scholarship-granting organization under this subchapter.

(2) An eligible contribution to a scholarship-granting organization in exchange for a tax credit under subdivision (a)(1) of this section shall not be claimed as a charitable deduction to income under § 26-51-419.

(3) An eligible contribution to a scholarship-granting organization where no tax credit is awarded under subdivision (a)(1) of this section may be claimed as a charitable deduction to income under § 26-51-419.

(b) A tax credit claimed under subsection (a) of this section:

(1) Shall be in an amount equal to the total eligible contribution made by the eligible taxpayer to the scholarship-granting organization during the calendar year in which the receipt under § 6-18-2206(3) is issued, but not in excess of the Arkansas state income tax liability of the taxpayer; and

(2) May be carried forward in any amount to the next-succeeding taxable year and annually thereafter for a total period of three (3) years;

and

(c)(1) The total amount of state income tax credits awarded under this section shall not exceed two million dollars (\$2,000,000) per calendar year.

(2) The Tax Credits and Special Refunds Section of the Department of Finance and Administration, or its successor, shall:

(A) Award the tax credits on a first-come, first-served basis from the receipts provided to the section under § 6-18-2206(3); and

(B) Notify the Division of Elementary and Secondary Education when the annual cap under subdivision (c)(1) of this section is met.

6-18-2205. Educational scholarships – Disbursement.

The average amount of all educational scholarships awarded by a scholarship-granting organization to qualified students under this subchapter shall not exceed:

(1) Eighty percent (80%) of the previous school year’s foundation funding amount under § 6-20-2305(a)(2) for qualified students who are in kindergarten through grade eight (K-8); and

(2) Ninety percent (90%) of the previous school year’s foundation funding amount under § 6-20-2305(a)(2) for qualified students who are in grades nine through twelve (9-12).

6-18-2206. Scholarship-granting organizations – Duties.

Each scholarship-granting organization shall:

(1) Notify the Division of Elementary and Secondary Education of its intent to provide educational scholarships to qualified students attending private schools;

(2) Demonstrate proof of exemption from federal income tax under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code, as in effect on January 1, 2021;

(3)(A) Provide a receipt, approved by the division, to a taxpayer for eligible contributions made to the scholarship-granting organization.

(B) A scholarship-granting organization shall provide a copy of a receipt issued under subdivision (3)(A) of this section to the Tax Credits and Special Refunds Section of the Department of Finance and

Administration or its successor.

(C) A receipt issued by a scholarship-granting organization under subdivision (3)(A) of this section shall be issued only for the amount of eligible contributions actually received;

(4) Ensure that first-time recipients of educational scholarships were not continuously enrolled in a private school within the state during the previous school year;

(5) Establish a system for parents or guardians of qualified students who receive educational scholarships under this subchapter to direct educational scholarship funds to nonpublic schools by use of:

(A) Checks;

(B) Electronic funds transfer, including an automated clearinghouse transfer; or

(C) Another system that the scholarship-granting organization finds to be commercially viable, cost-effective, and accessible to parents or guardians of qualified students;

(6)(A) Conduct and maintain for audit purposes a background check of all employees of the scholarship-granting organization.

(B) A scholarship-granting organization shall exclude any individual from employment who may reasonably pose a risk to the appropriate use of eligible contributions under this subchapter;

(7) Distribute eligible contributions within three (3) tax years of receipt by the scholarship-granting organization;

(8) Demonstrate financial viability if it expects to receive eligible contributions equal to or greater than fifty thousand dollars (\$50,000) during the academic school year by filing with the division before the start of the academic school year either:

(A) A surety bond payable to the State of Arkansas in an amount equal to the aggregate amount of eligible contributions the scholarship-granting organization expects to receive during the academic school year; or

(B) Financial information that demonstrates the financial viability of the scholarship-granting organization;

(9) Ensure that participating private schools:

(A) Comply with all health and safety laws and rules;

(B) Hold valid occupancy of buildings as required by the

relevant municipality in which the private school is located;

(C)(i) Are held academically accountable by annually administering or making provision for the administration of a nationally recognized norm-referenced test to qualified students in grades three through ten (3-10) who have received educational scholarships under this subchapter.

(ii) However, a qualified student in grades three through ten (3-10) who has received an educational scholarship under this subchapter, has an individualized service plan in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. 31 1412(a)(10), as it existed on January 1, 2021, and is determined by the private school to need an exemption from standardized testing due to the existence of a significant cognitive disability is not required to take the test required under subdivision (9)(C)(i) of this section.

(iii) If a student is not required to take the test required under subdivision (9)(C)(i) of this section, a participating private school shall annually make provision for the student to take an alternate assessment approved by the State Board of Education or prepare a portfolio that provides information on a student's progress to the student's parent or guardian; and

(D)(i) Annually report the scores and other academic progress to:

(a) The parent or guardian of each qualified student who has received an educational scholarship under this subchapter; and

(b)(1) An independent research organization selected by the division in accordance with § 6-18-2207(b)(1).

(2) Data reported to an independent research organization shall be reported in a manner that ensures disaggregation by grade level, gender, family income level, and race.

(ii) The annual report required under this subdivision (9)(D) shall be published by the division on the division's website each year;

(10)(A) Report to the division by June 1 of each year the following information based on the previous academic school year:

(i) The name and address of the scholarship-granting organization;

(ii) The total number and total dollar amount of eligible contributions the scholarship-granting organization received during the previous calendar year;

(iii) The total number and total dollar amount of educational scholarships awarded to qualified students under this subchapter during the previous calendar year; and

(iv) The total number of qualified students, according to the qualified students' respective resident public school districts, who received an educational scholarship from the scholarship-granting organization under this subchapter during the previous budget year.

(B) The report required under subdivision (10)(A) of this section shall be prepared by a certified public accountant; and

(11) Ensure that at least ninety percent (90%) of revenue from eligible contributions and one hundred percent (100%) of revenue from interest or investments is spent within three (3) years of receipt on:

(A) Educational scholarships; and

(B) Activities pertaining to the oversight of participating private schools.

6-18-2207. Department of Finance and Administration and Division of Elementary and Secondary Education – Duties.

(a)(1) The Department of Finance and Administration, in consultation with the Division of Elementary and Secondary Education, shall create and provide a standardized form of receipt to be issued by a scholarship-granting organization to a taxpayer who makes an eligible contribution to the scholarship-granting organization that indicates the value of each eligible contribution made by the eligible taxpayer.

(2) The receipt issued to a taxpayer under subdivision (a)(1) of this section shall be filed with the taxpayer's tax return for any year in which the taxpayer claims an eligible contribution under this subchapter.

(b)(1) The Division of Elementary and Secondary Education shall select an independent research organization, which may be a public or private entity or institution of higher education, to which participating nonpublic schools shall annually report information as required under § 6-18-2206(9)(D)(i)(b).

(2)(A) An independent research organization selected under subdivision (b)(1) of this section shall annually report to the Division of

Elementary and Secondary Education on a statewide basis year-to-year learning gains of qualified students who have received an educational scholarship under this subchapter and who have scores for a nationally recognized norm-referenced test administered during the school year following the effective date of this act for two (2) consecutive years at the same participating private school.

(B) The information reported under subdivision (b)(2)(A) of this section shall be:

(i) Disaggregated by the qualified students' grade level, gender, family income level, and race;

(ii) In compliance with the requirements under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; and

(iii) Used only for the purpose of creating the annual report as required under § 6-18-2206(9)(D)(i)(b).

(C) The independent research organization shall not disaggregate data to a level that would identify:

(i) Individual participating private schools; or

(ii) The academic level of individual qualified students.

(c) The Division of Elementary and Secondary Education may:

(1) Conduct an audit or other appropriate financial review of a scholarship-granting organization annually to ensure compliance with the requirements of this subchapter or upon reasonable belief that a scholarship-granting organization has violated requirements under this subchapter;

(2)(A) Seek and accept gifts, grants, or donations from private or public sources for purposes of selecting an independent research organization under subsection (b) of this section.

(B)(i) The Division of Elementary and Secondary Education shall transmit all gifts, grants, or donations received under subdivision (c)(2)(A) of this section to the Treasurer of State, who shall credit the received gifts, grants, or donations received by the Division of Elementary and Secondary Education to the Philanthropic Investment in Arkansas Kids Academic Accountability Fund under § 19-5-1271.

(ii) The funds in the Philanthropic Investment in Arkansas Kids Academic Accountability Fund are subject to annual appropriation by the General Assembly to the Division of Elementary and

Secondary Education for the direct and indirect costs associated with selecting an independent research organization as required under subsection (b) of this section and reporting information as required under § 6-18-2206(9)(D)(i)(b).

(iii) If the gifts, grants, donations accepted under this subdivision (c)(2) are not sufficient for the purposes of selecting an independent research organization under subsection (b) of this section and reporting information as required under § 6-18-2206(9)(D)(i)(b), the Division of Elementary and Secondary Education shall notify the scholarship-granting organizations, which shall provide the necessary direct and indirect costs associated with selecting an independent research organization and reporting required information; and

(3)(A) Prohibit a scholarship-granting organization from qualifying as a recipient of eligible contributions under this subchapter if the Division of Elementary and Secondary Education establishes that the scholarship-granting organization has intentionally and substantially failed to comply with the requirements under § 6-18-2206.

(B) If the Division of Elementary and Secondary Education bars a scholarship-granting organization from qualifying as a recipient of eligible contributions under subdivision (c)(3)(A) of this section, the scholarship-granting organization shall notify the affected qualified students who have received educational scholarships and the qualified students' parents or guardians as soon as reasonably practicable upon notification by the Division of Elementary and Secondary Education of disqualification.

(d)(1) The Revenue Division of the Department of Finance and Administration shall promulgate rules that are necessary to carry out the purposes of this section.

(2) The Revenue Division of the Department of Finance and Administration shall consult with the Division of Elementary and Secondary Education during the promulgation of the rules under subdivision (d)(1) of this section.

6-18-2208. Prorated contribution amounts.

A taxpayer may instruct their employer to divert a prorated amount of after-tax earnings to one (1) or more scholarship-granting organizations of

the taxpayer's choice.

SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1271. Philanthropic Investment in Arkansas Kids Academic Accountability Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "Philanthropic Investment in Arkansas Kids Academic Accountability Fund".

(b) The fund shall consist of:

(1) Moneys obtained from private or public grants, gifts, or donations that are designated to be credited to the fund; and

(2) Any other funds authorized or provided by law.

(c) The fund shall be used by the Division of Elementary and Secondary Education to create and maintain the Philanthropic Investment in Arkansas Kids Program under the Philanthropic Investment in Arkansas Kids Program Act, § 6-18-2201 et seq.

(d) Moneys remaining in the fund at the end of each fiscal year shall carry forward and be made available for the purposes stated in this section in the next fiscal year.