

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H2/28/03

A Bill

Act 515 of 2003
HOUSE BILL 1735

5 By: Representative Hutchinson
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS TAX-DEFERRED TUITION
10 SAVINGS PROGRAM ACT OF 1999; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 TO AMEND THE ARKANSAS TAX-DEFERRED
15 TUITION SAVINGS PROGRAM ACT OF 1999.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 6, Chapter 84, is amended to read as
21 follows:

22 6-84-101. Title.

23 This chapter shall be known and may be cited as the "Arkansas Tax-
24 Deferred Tuition Savings Program Act ~~of 1999~~".
25

26 6-84-102. Purpose.

27 It is the intent and purpose of this chapter to create and establish
28 the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. § 529
29 as in effect on ~~January 1, 1999~~ February 1, 2003, to be administered by the
30 ~~Arkansas Teacher Retirement System~~ Section 529 Plan Review Committee through
31 the adoption of rules and regulations for the administration of the program.
32

33 6-84-103. Definitions.

34 For purposes of this chapter:

35 (1) "Account" means an ~~individual trust account or savings~~
36 account established in accordance with this chapter;



1 (2) "Account owner" means the ~~individual or individuals other~~
2 ~~than the designated beneficiary identified at the time the account is opened~~
3 ~~as having the right to withdraw funds from the account~~ person who, under this
4 chapter or the rules promulgated by the Section 529 Plan Review Committee, is
5 entitled to select or change the designated beneficiary of an account, to
6 designate any person other than the designated beneficiary to whom funds may
7 be paid from the account, or to receive distributions from the account if no
8 other person is designated;

9 (3) "Act" means the "Arkansas Tax-Deferred Tuition Savings
10 Program ~~Act of 1999~~";

11 (4) "Arkansas Tax-Deferred Tuition Savings Program Trust" or
12 "trust" means the trust created under § 6-84-104. Participation in the trust
13 shall be open to Arkansas residents and nonresidents alike;

14 (5) "Committee" means the ~~investment committee~~ Section 529 Plan
15 Review Committee, provided for in § 6-84-105, which shall oversee the
16 administration of the Arkansas Tax-Deferred Tuition Savings Program and
17 ensure that the program complies with the provisions of this chapter and acts
18 in accordance with 26 U.S.C. § 529 as in effect on February 1, 2003;

19 (6) "Contribution" means any payment directly allocated to an
20 account for the benefit of a designated beneficiary or used to pay
21 administrative fees associated with an account, and that portion of any
22 rollover amount treated as a contribution under 26 U.S.C. § 529 as in effect
23 on February 1, 2003;

24 (7) "Contributor" means any person making a contribution to an
25 account;

26 ~~(6)~~(8) "Designated beneficiary" means, except as provided in §
27 6-84-108, the individual designated at the time the account is opened as
28 having the right to receive a qualified withdrawal for the payment of
29 qualified higher education expenses or, if such designated beneficiary is
30 replaced in accordance with § 6-84-108, such replacement;

31 ~~(7)~~(9) "Higher education institution" means an eligible education
32 institution as defined in 26 U.S.C. § 135(c)(3) ~~3as in effect on January 1,~~
33 ~~1999~~ February 1, 2003;

34 ~~(8)~~(10) "Member of the family" shall have the same meaning as is
35 contained in 26 U.S.C. § 529(e) as in effect on ~~January 1, 1999~~ February 1,
36 2003;

1 ~~(9)~~(11) "Nonqualified withdrawal" means a withdrawal from an
2 account that is not:

3 (A) A qualified withdrawal;

4 (B) A withdrawal made as the result of the death or
5 disability of the designated beneficiary;

6 (C) A withdrawal made as the result of a scholarship, or
7 allowance or payment described in 26 U.S.C. § 135(d)(1)(B) or (C) as in
8 effect on ~~January 1, 1999~~ February 1, 2003, received by the designated
9 beneficiary but only to the extent of the amount of such scholarship,
10 allowance, or payment; or

11 (D) A rollover or change in the designated beneficiary
12 ~~described in § 6-84-108;~~

13 (12) "Person" means a person as defined in 26 U.S.C. § 529 as in
14 effect on February 1, 2003;

15 ~~(10)~~(13) "Program" means the Arkansas Tax-Deferred Tuition
16 Savings Program established by this chapter;

17 ~~(11)~~(14) "Qualified higher education expenses" means tuition and
18 other permitted expenses as presently set forth in 26 U.S.C. § 529(e) as in
19 effect on ~~January 1, 1999~~ February 1, 2003, for the enrollment or attendance
20 of a designated beneficiary at a higher education institution;

21 (15) "Qualified tuition program" means a qualified tuition
22 program as defined in 26 U.S.C. § 529 as in effect February 1, 2003;

23 ~~(12)~~(16) "Qualified withdrawal" means a withdrawal from an
24 account to pay the qualified higher education expenses of the designated
25 beneficiary but only if the withdrawal is made in accordance with the
26 requirements of the program; and

27 ~~(13) "System" means the Arkansas Teacher Retirement System,~~
28 ~~which is organized and governed pursuant to § 24-7-101 et seq.~~

29 (17) "Rollover" means a disbursement or transfer from an account
30 that is transferred to or deposited within sixty (60) calendar days of the
31 transfer into an account of the same person for the benefit of the same
32 designated beneficiary or another person as a designated beneficiary, if the
33 transferee account was created under this chapter or under another qualified
34 tuition program maintained in accordance with 26 U.S.C. § 529 as in effect on
35 February 1, 2003.

36

1 6-84-104. Creation of the Arkansas Tax-Deferred Tuition Savings
2 Program Trust.

3 (a) There is created the Arkansas Tax-Deferred Tuition Savings Program
4 Trust.

5 (b) The co-trustees of the trust shall be the Director of the
6 Department of Higher Education, the ~~executive director~~ Executive Director of
7 the Arkansas Teacher Retirement System, and the Treasurer of State shall be
8 the trustee of the trust.

9
10 6-84-105. Administration - Authority - Powers.

11 (a) This chapter shall be administered by the ~~Arkansas Tax-Deferred~~
12 ~~Tuition Savings Program Investment Committee,~~ committee which shall be
13 composed of:

14 (1) The Director of the Department of Higher Education;

15 (2) The Executive Director of the Arkansas Teacher Retirement ~~System's~~
16 ~~System investment committee;~~ and

17 (3) The Treasurer of State

18 ~~(2) The Director of the Department of Higher Education.~~

19 (b) ~~The Arkansas Tax-Deferred Tuition Savings Program Investment~~
20 ~~Committee~~ committee shall adopt such rules and regulations as it deems
21 necessary and proper to administer this subchapter and to ensure the
22 program's compliance with 26 U.S.C. § 529 as in effect on ~~January 1, 1999~~
23 February 1, 2003.

24 (c) ~~The Arkansas Tax-Deferred Tuition Savings Program Investment~~
25 ~~Committee~~ committee shall have the following powers, duties, and functions:

26 (1) To establish, develop, implement, and maintain the program
27 in a manner consistent with the provisions of this subchapter and 26 U.S.C. §
28 529 as in effect on ~~January 1, 1999~~ February 1, 2003, to obtain the benefits
29 provided by such section for the ~~program and its participants~~ program,
30 account owners, and designated beneficiaries;

31 (2) To adopt rules and regulations for the general
32 administration of the program;

33 (3) To maintain, invest, and reinvest the funds contributed into
34 the program consistent with the investment restrictions established by the
35 committee and the standard of care described in the prudent investor rule
36 presently codified as § 24-3-417; and

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

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

9
10 6-84-106. Investment direction.

11 Except as permitted in 26 U.S.C. § 529 as in effect on ~~January 1, 1999~~
12 February 1, 2003, and regulations thereunder as in effect on January 1, 1999,
13 no person shall have the right to direct the investment of any contributions
14 to or earnings from the ~~Arkansas Tax Deferred Tuition Savings Program~~
15 program.

16
17 6-84-107. ~~The Arkansas Tax Deferred Tuition Savings Program~~ Accounts.

18 (a)(1) An account owner or contributor may establish an account by
19 making an initial contribution to the ~~Arkansas Tax Deferred Tuition Savings~~
20 Program, signing an application form approved by the committee, and naming
21 the account owner and the designated beneficiary in the name of the
22 designated beneficiary.

23 (2) If the contributor is not the account owner, the account
24 owner shall also sign the application form.

25 (3) Any person may make contributions to an account after the
26 account is opened.

27 (b) Contributions to an account shall be made only in cash.

28 (c) Total contributions to all accounts shall not exceed those
29 reasonably necessary to provide for the qualified higher education expenses
30 of the beneficiary, and the ~~Arkansas Tax Deferred Tuition Savings Program~~
31 ~~Investment Committee~~ committee shall establish maximum contribution limits
32 applicable to program accounts.

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

36 (e)(1) The program shall be permitted to collect application, account,

1 or administrative fees to defray the costs of the program.

2 (2) The application, account, or administrative fees must be
3 approved by the committee.

4
5 6-84-108. ~~Designated~~ Naming of designated beneficiary and transfers of
6 accounts.

7 (a) An account owner shall have the right to name the designated
8 beneficiary of an account and, at any time, to change the designated
9 beneficiary of an account to another individual who is a member of the family
10 of the former designated beneficiary.

11 ~~(b) An account owner shall have the right at any time to direct that~~
12 ~~all or a portion of an account be transferred to the account of another~~
13 ~~beneficiary if the designated beneficiary is a member of the same family~~ At
14 the direction of an account owner, all or a portion of an account may be
15 transferred to another account of which the designated beneficiary is a
16 member of the family of the designated beneficiary of the transferee account,
17 if the transferee account was created by this chapter or under another
18 qualified tuition program maintained in accordance with 26 U.S.C. § 529 as in
19 effect February 1, 2003.

20
21 6-84-109. Account withdrawals — ~~Penalties.~~

22 (a) Withdrawal from an account may be made on thirty (30) days'
23 written notice by the account owner to the ~~Arkansas Tax-Deferred Tuition~~
24 ~~Savings Program Investment Committee~~ committee or on such shorter notice as
25 the committee may by regulation provide.

26 ~~(b) A withdrawal shall be designated as a qualified withdrawal or a~~
27 ~~nonqualified withdrawal, and the application shall provide such information~~
28 ~~and be made on such forms as the committee shall find are necessary to enable~~
29 ~~the committee to determine the nature of the withdrawal.~~

30 ~~(c) The committee shall establish a more than de minimis penalty, at~~
31 ~~the minimum amount necessary to satisfy the requirements of 26 U.S.C. § 529~~
32 ~~as in effect on January 1, 1999, for a nonqualified withdrawal on the portion~~
33 ~~of the withdrawal that constitutes income under 26 U.S.C. § 529 as in effect~~
34 ~~on January 1, 1999.~~

35 ~~(d)~~ (b)(1) An account withdrawal paid to or for the benefit of any
36 person during any calendar year shall be reported to the person and the

1 Internal Revenue Service.

2 (2) The report shall be made at the time required by the rules
3 of the Internal Revenue Service as in effect on February 1, 2003, and contain
4 such information as is required by law.

5 ~~(e) Penalties collected under this section may be used to defray the~~
6 ~~costs of the Arkansas Tax-Deferred Tuition Savings Program.~~

7
8 6-84-110. Prohibitions.

9 (a) Total contributions to all accounts established on behalf of a
10 particular designated beneficiary in excess of those reasonably necessary to
11 meet the designated beneficiary's qualified higher education expenses are
12 prohibited.

13 (b)(1) No account or any legal or beneficial interest in an account
14 shall be assignable or pledged or otherwise used to secure or obtain a loan
15 or other advancement.

16 (2) An account, or any legal or beneficial interest in an
17 account, shall not be subject to attachment, levy, or execution by any
18 creditor of an account owner or designated beneficiary.

19
20 6-84-111. Funds exempt from tax.

21 (a) Except as otherwise indicated in this chapter, interest,
22 dividends, ~~and~~ capital gains, and other income earned from on funds invested
23 in the ~~Arkansas Tax-Deferred Tuition Savings Program~~ program or in another
24 qualified tuition program maintained in accordance with 26 U.S.C. § 529 as in
25 effect February 1, 2003, shall be exempt from Arkansas income taxes.

26 (b) Contributions to ~~a tuition savings~~ an account established under
27 this program or under another qualified tuition program maintained in
28 accordance with 26 U.S.C. § 529 as in effect February 1, 2003, may not be
29 excluded or deducted from the contributor's income for the purpose of
30 calculating Arkansas income tax.

31 (c)(1) Qualified withdrawals from ~~a tuition savings~~ an account
32 established under this program or under another qualified tuition program
33 maintained in accordance with 26 U.S.C. § 529 as in effect February 1, 2003,
34 will shall be exempt from Arkansas income tax with respect to the designated
35 beneficiary's income.

36 (2)(A) Nonqualified withdrawals from ~~a tuition savings~~ an

1 account established under this program or under another qualified tuition
 2 program maintained in accordance with 26 U.S.C. § 529 as in effect February
 3 1, 2003, will shall be subject to Arkansas income tax as provided in
 4 subdivision (c)(2)(B) of this section.

5 (B) The Any income earned on the contributions to an
 6 account that are included in a nonqualified withdrawal will be taxable to the
 7 party, account owner or designated beneficiary, who actually ~~makes~~ receives
 8 the withdrawal.

9 (d) If an account owner receives a refund of contributions to a
 10 ~~tuition savings~~ an account established under this program or under another
 11 qualified tuition program maintained in accordance with 26 U.S.C. § 529 as in
 12 effect February 1, 2003, because of either:

13 (1) The death or disability of the designated beneficiary; or

14 (2) A scholarship, or allowance or payment described in 26
 15 U.S.C. § 135 (d)(1)(B) or (C) as in effect on ~~January 1, 1999~~ February 1,
 16 2003, received by the designated beneficiary then any ~~earnings~~ income earned
 17 on the ~~contribution~~ contributions to the account that are included in the
 18 refund will be subject to Arkansas income tax.

19
 20 6-84-112. Limitation on liability.

21 Neither the ~~Arkansas Tax Deferred Tuition Savings Program~~ program, the
 22 ~~Arkansas Tax Deferred Tuition Savings Program Investment Committee~~ committee
 23 and each of its members, nor the state shall insure any account or guarantee
 24 any rate of return or any interest rate on any contribution, nor shall they
 25 or any one of them be liable for any loss incurred by any person as a result
 26 of participating in the program.

27
 28 6-84-113. Liberal construction.

29 This chapter shall be liberally construed to comply with the
 30 requirement of 26 U.S.C. § 529 as in effect on ~~January 1, 1999~~ February 1,
 31 2003.

32
 33 SECTION 2. This act shall apply to tax years beginning on or after
 34 January 1, 2003.

35
 36 /s/ Hutchinson

APPROVED: 3/18/2003