

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2449

"AN ACT TO CREATE THE ARKANSAS POST-SECONDARY PREPAID TUITION
PROGRAM."

Amendment No. 1 to House Bill No. 2449.

Amend House Bill No. 2449 as originally introduced:

Delete everything following the enacting clause and substitute the following:

"SECTION 1. For purposes of this act:

(1) "Academic year" means the time period specified by each participating institution;

(2) "Board" means the board of directors of the Arkansas Prepaid Affordable College Tuition Trust Fund;

(3) "Fund" means the prepaid tuition payment fund created in section 2 of this act and known as the "Arkansas Prepaid Affordable College Tuition Trust Fund";

(4) "Office" means division of the office of the Treasurer of State that is responsible for administering the prepaid tuition accounts;

(5) "Participating institution" means any Arkansas public four-year institution or two-year community college or technical college that grants a postsecondary education credential, all of which are required to participate, and any Arkansas private college or university that is accredited by a national or regional accrediting agency, recognized by the United States Department of Education, that voluntarily requests to participate and is accepted for participation in the program by the board of directors created in section 3 of this act;

(6) "Prepaid tuition" means the amount of tuition estimated by the board for the standard tuition plans and for each participating institution for the academic year specified in the prepaid tuition contract;

(7) "Prepaid tuition academic year conversion" means the difference between the amount of prepaid tuition required in the original prepaid tuition contract and the amount of prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year;

(8) "Prepaid tuition academic year conversion shortfall" means the amount by which the prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year exceeds the amount of prepaid tuition required in the original prepaid tuition contract;

(9) "Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;



(10) "Prepaid tuition contract" means the contract entered into by the board and the purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any participating institution as provided in sections 1 through 7 of this act;

(11) "Prepaid tuition conversion" means the difference between the prepaid tuition of a standard plan and the prepaid tuition at a participating institution or the difference between the prepaid tuition at one (1) participating institution and the prepaid tuition at another participating institution;

(12) "Prepaid tuition conversion shortfall" means the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition of a standard plan or the amount by which the prepaid tuition at a participating institution exceeds the amount of the prepaid tuition at another participating institution;

(13) "Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;

(14) "Qualified beneficiary" means any resident of Arkansas at the time a purchaser enters into a prepaid tuition contract on behalf of the resident or any nonresident who intends to attend a participating institution in Arkansas;

(15) "Standard tuition plan" means the average of the estimated tuition for:

- (A) Arkansas' community colleges;
- (B) Technical colleges;
- (C) Four-year universities; or
- (D) Private colleges or universities;

(16) "Tuition" means the actual charges and all mandatory fees required as a condition of full-time enrollment in an undergraduate program for an academic year for a qualified beneficiary to attend a participating institution. Tuition for a private college or university is calculated on the current year tuition rate, increased by the same percentage that the University of Arkansas tuition is increased on a per year basis;

(17) "Tuition credit" means the discounted net present value of a unit equal to one twenty-fourth (1/24) of the prepaid tuition; and

(18) "Tuition shortfall" means the amount by which tuition exceeds the prepaid tuition adjusted in proportion to the number of tuition credits purchased.

SECTION 2. (a)(1) There is hereby created an instrumentality of the state to be known as the "Arkansas Prepaid Affordable College Tuition Trust Fund".

(2) The fund shall be governed by a board of directors and administered by the Treasurer of State.

(3) The fund shall consist of payments received from prepaid tuition contracts under sections 1 through 7 of this act.

(4) Income earned from the investment of the fund shall remain in the fund and be credited to it.

(5) The fund shall not constitute an investment company.

(b) The purposes of the fund are:

(1) To provide affordable access to participating institutions for the qualified beneficiaries; and

(2) To provide students and their parents economic protection against rising tuition costs;

(c)(1) The office and the facilities of the Treasurer of State shall be used and employed in the administration of the fund including, but not limited to:

(A) The keeping of records;

(B) The employment of staff to assist in the administration of the fund;

(C) The management of accounts and other investments;

(D) The transfer of funds; and

(E) The safekeeping of securities evidencing investments.

(2) The office of the Treasurer of State and the board of the Arkansas Higher Education Assistance Authority, shall work together to jointly market, as appropriate, the Arkansas Prepaid Tuition Plan and the Savings Plan.

(d) Assets of the fund shall constitute public funds of the state and may be invested in any instrument, obligation, security, or property that constitutes legal investments for the investment of public funds in the state that are deemed most appropriate by the board and may be pooled for investment purposes with any other investment of the state that is eligible for asset pooling.

(e) The fund, through the Treasurer of State, may receive and deposit into the fund gifts made by any individual or agency as deemed acceptable by the board.

(f) There is created a separate account within the Treasurer of State's office to be known as the Prepaid Postsecondary Tuition Administrative Account for the purposes of implementing and maintaining the Arkansas Prepaid Affordable College Tuition Trust Fund. Funds may be transferred from the unclaimed property fund to the administrative account and shall be repaid to the abandoned property fund no later than three (3) years after the transfer. The board may establish administrative fees for handling prepaid tuition contracts and deposit the money in this account.

(g) Four (4) years after the effective date of this Act, the administration of the fund shall be transferred from the office of the Treasurer of State to the Arkansas Higher Education Assistance Authority unless the General Assembly shall decide that the administration of the fund shall remain in the office of the Treasurer of State.

SECTION 3. (a) The fund shall be governed by an eleven (11) member board of directors.

(1) The board shall have five (5) ex officio voting members including the Treasurer of State, the President of the Council on Postsecondary Education or designee, the Secretary of the Finance Cabinet or designee, the Secretary of the Revenue Cabinet or designee, the Chair of the Association of Arkansas Independent Colleges and Universities or designee, three (3) members appointed by the Treasurer of State, and three (3) members appointed by the Governor.

(2) The Executive Director of the Higher Education Assistance Authority or designee shall serve as a nonvoting member. The gubernatorial and Treasurer of State appointees shall have experience in finance, accounting, or investment management.

(b)(1) Of the members to be appointed initially by the Treasurer of

State, one (1) shall be appointed for a three (3) year term, and two (2) shall be appointed for a four (4) year term.

(2) Of the members to be appointed by the Governor, two (2) shall be appointed for a term of two (2) years, and one (1) for a term of three (3) years.

(3) Thereafter, all appointments shall be for terms of four (4) years, except that appointments to fill vacancies shall be for the unexpired terms.

(4) No person shall be appointed to serve for more than two (2) successive four-year terms. No person holding a full-time office or position of employment with the state, any county or city, or any educational institution shall be eligible for gubernatorial appointment to the board.

(c) Members of the board shall receive no compensation, but shall be reimbursed expenses incurred in the performance of their duties at the same per diem and travel rate as is paid the employees of the state.

(d)(1) The Treasurer of State shall be the chair and presiding officer of the board.

(2) The Treasurer of State may appoint other officers as the board may deem advisable or necessary.

(3) A majority of the members of the board shall constitute a quorum for the transaction of the business of the fund.

(e) The initial board appointments shall be made by October 1, 2003.

SECTION 4. The board shall:

(1) Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of sections 1 through 7 of this act;

(2) Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

(3) Invest moneys in the fund in any instruments, obligations, securities, or property as permitted by law and deemed appropriate by the board;

(4) Procure insurance to protect against any loss in connection with the fund's property, assets, or activities and to indemnify board members from personal loss or accountability from liability arising from any action or inaction as a board member;

(5) Make arrangements with participating institutions in the state to fulfill obligations under prepaid tuition contracts including, but not limited to, payment from the fund of the tuition cost on behalf of a qualified beneficiary to attend a participating institution in which the beneficiary is admitted and enrolled;

(6) Develop requirements, procedures, and guidelines regarding prepaid tuition contracts including, but not limited to:

(A) The termination, withdrawal, or transfer of payments under a prepaid tuition contract;

(B) Tuition shortfalls;

(C) Number of participants;

(D) Time limitations for prepaid tuition contracts and the use of tuition benefits;

(E) Tuition conversions;

(F) Payment schedules;

(G) Payroll deductions;

- (H) Penalties for failure of purchasers to adhere to contracts;
and
(I) Transfer of prepaid tuition credits towards private education in the state or for out-of-state institutions;
(7) Obtain appropriate actuarial assistance to establish, maintain, and certify a fund sufficient to:
(A) Defray the obligation of the fund;
(B) Annually evaluate or cause to be evaluated, the actuarial soundness of the fund; and
(C) Determine prior to each academic year:
(i) The amount of prepaid tuition for each standard tuition plan and for each participating institution for specific academic years;
(ii) The corresponding required amount of tuition credits;
(iii) The amount of prepaid tuition conversion; and
(iv) The amount of prepaid tuition academic year conversion;
(8) Make an annual report each year to the Legislative Council showing the fund's condition; and
(9) Market and promote participation in the fund.

SECTION 5. (a)(1) The prepaid tuition contract entered into by the purchaser and the board shall constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a qualified beneficiary upon acceptance and enrollment at a participating institution in proportion to the number of tuition credits purchased.

(2) The fund shall pay this amount to the participating institution on behalf of the qualified beneficiary.

(b) The fund shall pay the amount of any tuition shortfall to the participating institution on behalf of the qualified beneficiary.

(c) The purchaser or qualified beneficiary shall pay to the participating institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.

(d) A qualified beneficiary attending a participating institution may apply tuition credits to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.

(e)(1) The board and participating institutions may agree that tuition credits remaining in a prepaid tuition account after tuition is paid may be converted into other educational expense credits under administrative regulations promulgated by the board in compliance with Section 529 of the Internal Revenue Code.

(2) The board may permit the use of tuition credits for part-time undergraduate enrollment or graduate programs at participating institutions, after an appropriate conversion.

(3) Any prepaid tuition remaining in a prepaid tuition account, for reasons other than termination of the account as provided for in section 7 of this act, shall be refunded to the purchaser or the purchaser's designee.

(f) The value of the prepaid tuition credits shall not be used in calculating personal asset contribution for determining eligibility and need

for student loan programs, student grant programs, or other student aid programs administered by any agency of the state, except as otherwise may be provided by federal law.

SECTION 6. (a)(1) Purchasers buying tuition credits for a qualified beneficiary shall enter into prepaid tuition contracts with the board.

(2) These contracts shall be in a form as shall be determined by the office.

(3) The contract shall provide for the purchase of tuition credits for prepaid tuition for the qualified beneficiary from one (1) to four (4) specific academic years.

(b) Upon written notification to the office, a purchaser may amend the prepaid tuition contract to change:

(1) The qualified beneficiary;

(2) The academic year or years for which tuition credits are purchased;

(3) A standard plan designation to a participating institution designation;

(4) A standard plan designation to another standard plan designation; or

(5) One (1) participating institution designation to another participating institution designation. The value of the tuition credit shall be adjusted under requirements of administrative regulations promulgated by the board.

(c) A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary and shall be exempt from all state and local taxes including, but not limited to, the intangible personal property tax levied, the individual income tax levied, and the inheritance tax levied.

(d) Nothing in sections 1 through 7 of this act or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to a participating institution, be allowed to continue to attend a participating institution after having been admitted, or graduate from a participating institution.

(e)(1) Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition.

(2) Prepaid tuition contract payments may be made in lump sum installments.

(f)(1) The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract.

(2) In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.

(g)(1) The prepaid tuition contract shall provide that the purchaser and the qualified beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account.

(2) Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary.

(3) No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.

(h) A prepaid tuition contract does not constitute a security.

SECTION 7. (a) Upon termination of a prepaid tuition contract, the office shall pay from the fund to the purchaser or the purchaser's designee the value of the tuition credits if the contract is terminated for any of the following:

(1) The death of the qualified beneficiary;

(2) The disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the beneficiary at a participating institution impossible or unreasonably burdensome;

(3) The purchase price of the tuition credits if the contract is terminated for any of the following:

(A) Failure of the qualified beneficiary who, in the opinion of the office, has made a good faith attempt to gain admission to a participating or nonparticipating institution within the time limits imposed by the board; or

(B) The movement of a family of a qualified beneficiary from Arkansas to another state with a savings plan.

(b)(1) Upon termination of a prepaid tuition account as a result of a decision by the qualified beneficiary to attend a nonparticipating institution, the office at the direction of the beneficiary and upon presentation of proof of the beneficiary's acceptance by and enrollment in the nonparticipating institution, shall pay from the fund to the institution the value of the tuition credits as determined by the board of directors for the postsecondary education prepaid tuition program.

(2) If the cost of tuition exceeds the value of the tuition credits, it shall be the responsibility of the beneficiary to pay the difference.

(3) If the value of the tuition credits exceeds the cost of tuition, the beneficiary shall be given a refund equal to the difference.

(c) At the option of the purchaser or the purchaser's designee, the purchase price of any unused tuition credits may be carried forward to another academic year or refunded by the office from the fund.

(d) Upon termination of a tuition account as a result of a decision by the qualified beneficiary not to attend a participating or nonparticipating institution, within time limits determined by the board, the purchaser or purchaser's designee shall receive the purchase price of the tuition credits.

(e) The office may impose a fee upon termination of the account for administrative costs and deduct the fee from the amount otherwise payable under this section.

(f) If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser or the purchaser's designee shall receive a refund from the fund by the office consisting of the amount of the prepaid tuition for the number of tuition credits purchased for that academic year.

(g) If the purchaser wishes to transfer funds from the prepaid tuition account to the Arkansas Higher Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board of directors of the Arkansas Prepaid Affordable College Tuition Trust Fund and the board of the Arkansas Higher Education Assistance Authority.

SECTION 8. The office of the Treasurer of State for the purpose of implementing and administering the prepaid tuition account program

established in sections 1 through 7 of this act. The program shall provide for the purchase of tuition credits for a beneficiary to attend a participating postsecondary institution.

SECTION 9. If the current prepaid contract obligations of the program exceed the market value of the program assets, at the request of the board, the Governor shall include in the annual budget requests submitted to the General Assembly an appropriation in the amount equal to the difference between the current prepaid contract obligations and the market value of the program assets."

The Amendment was read _____
By: Representative Bright
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Chief Clerk