

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

# A Bill

HOUSE BILL 1735

4  
5 By: Representative Hutchinson  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE ARKANSAS TAX-DEFERRED TUITION  
10 SAVINGS PROGRAM ACT OF 1999; AND FOR OTHER  
11 PURPOSES.  
12

## Subtitle

13  
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 and related regulations as in effect on ~~January 1, 1999~~ February 1, 2003, to  
30 be administered by the ~~Arkansas Teacher Retirement System~~ Section 529 Plan  
31 Review Committee through the adoption of rules and regulations for the  
32 administration of the program.  
33

34 6-84-103. Definitions.

35 For purposes of this chapter:

36 (1) "Account" means an ~~individual trust account or savings~~



1 account established in accordance with this chapter;

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

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

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

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

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

26 (7) "Contributor" means any person making a contribution to an  
 27 account;

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

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

36 ~~(8)~~(10) "Member of the family" shall have the same meaning as is

1 contained in 26 U.S.C. § 529(e) and related regulations as in effect on  
 2 ~~January 1, 1999~~ February 1, 2003;

3 ~~(9)~~(11) "Nonqualified withdrawal" means a withdrawal from an  
 4 account that is not:

5 (A) A qualified withdrawal;

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

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

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

15 (12) "Person" means a person as defined in 26 U.S.C. § 529 and  
 16 related regulations as in effect on February 1, 2003;

17 ~~(10)~~(13) "Program" means the Arkansas Tax-Deferred Tuition  
 18 Savings Program established by this chapter;

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

24 (15) "Qualified tuition program" means a qualified tuition  
 25 program as defined in 26 U.S.C. § 529 and related regulations as in effect  
 26 February 1, 2003;

27 ~~(12)~~(16) "Qualified withdrawal" means a withdrawal from an  
 28 account to pay the qualified higher education expenses of the designated  
 29 beneficiary but only if the withdrawal is made in accordance with the  
 30 requirements of the program; and

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

33 (17) "Rollover" means a disbursement or transfer from an account  
 34 that is transferred to or deposited within sixty (60) calendar days of the  
 35 transfer into an account of the same person for the benefit of the same  
 36 designated beneficiary or another person as a designated beneficiary, if the

1 transferee account was created under this chapter or under another qualified  
2 tuition program maintained in accordance with 26 U.S.C. § 529 and related  
3 regulations as in effect on February 1, 2003.

4  
5 6-84-104. Creation of the Arkansas Tax-Deferred Tuition Savings  
6 Program Trust.

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

9 (b) The co-trustees of the trust shall be the Director of the  
10 Department of Higher Education, the ~~executive director~~ Executive Director of  
11 the Arkansas Teacher Retirement System, and the Treasurer of State shall be  
12 the trustee of the trust.

13  
14 6-84-105. Administration - Authority - Powers.

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

- 18 (1) The Director of the Department of Higher Education;
- 19 (2) The Executive Director of the Arkansas Teacher Retirement System's  
20 System investment committee; and
- 21 (3) The Treasurer of State
- 22 ~~(2) The Director of the Department of Higher Education.~~

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

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

- 30 (1) To establish, develop, implement, and maintain the program  
31 in a manner consistent with the provisions of this subchapter and 26 U.S.C. §  
32 529 and related regulations as in effect on ~~January 1, 1999~~ February 1, 2003,  
33 to obtain the benefits provided by such section for the ~~program and its~~  
34 participants program, account owners, and designated beneficiaries;

- 35 (2) To adopt rules and regulations for the general  
36 administration of the program;

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

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

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

13  
 14 6-84-106. Investment direction.

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

20  
 21 6-84-107. ~~The Arkansas Tax-Deferred Tuition Savings Program~~ Accounts.

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

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

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

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

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

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

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

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

8  
 9 6-84-108. ~~Designated~~ Naming of designated beneficiary and transfers of  
 10 accounts.

11 (a) An account owner shall have the right to name the designated  
 12 beneficiary of an account and, at any time, to change the designated  
 13 beneficiary of an account to another individual who is a member of the family  
 14 of the former designated beneficiary.

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

24  
 25 6-84-109. Account withdrawals — ~~Penalties.~~

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

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

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

1 ~~of the withdrawal that constitutes income under 26 U.S.C. § 529 as in effect~~  
 2 ~~on January 1, 1999.~~

3 ~~(d)(b)(1)~~ An account withdrawal paid to or for the benefit of any  
 4 person during any calendar year shall be reported to the person and the  
 5 Internal Revenue Service.

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

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

11  
 12 6-84-110. Prohibitions.

13 (a) Total contributions to all accounts established on behalf of a  
 14 particular designated beneficiary in excess of those reasonably necessary to  
 15 meet the designated beneficiary's qualified higher education expenses are  
 16 prohibited.

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

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

23  
 24 6-84-111. Funds exempt from tax.

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

31 (b) Contributions to ~~a tuition savings~~ an account established under  
 32 this program or under another qualified tuition program maintained in  
 33 accordance with 26 U.S.C. § 529 and related regulations as in effect February  
 34 1, 2003, may not be excluded or deducted from the contributor's income for  
 35 the purpose of calculating Arkansas income tax.

36 (c)(1) Qualified withdrawals from ~~a tuition savings~~ an account

1 established under this program or under another qualified tuition program  
 2 maintained in accordance with 26 U.S.C. § 529 and related regulations as in  
 3 effect February 1, 2003, will shall be exempt from Arkansas income tax with  
 4 respect to the designated beneficiary's income.

5 (2)(A) Nonqualified withdrawals from ~~a tuition savings an~~ an  
 6 account established under this program or under another qualified tuition  
 7 program maintained in accordance with 26 U.S.C. § 529 and related regulations  
 8 as in effect February 1, 2003, will shall be subject to Arkansas income tax  
 9 as provided in subdivision (c)(2)(B) of this section.

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

14 (d) If an account owner receives a refund of contributions to ~~a~~  
 15 ~~tuition savings an~~ an account established under this program or under another  
 16 qualified tuition program maintained in accordance with 26 U.S.C. § 529 and  
 17 related regulations as in effect February 1, 2003, because of either:

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

19 (2) A scholarship, or allowance or payment described in 26  
 20 U.S.C. § 135 (d)(1)(B) or (C) and related regulations as in effect on ~~January~~  
 21 ~~1, 1999~~ February 1, 2003, received by the designated beneficiary then any  
 22 ~~earnings income earned~~ on the contribution contributions to the account that  
 23 are included in the refund will be subject to Arkansas income tax.

24  
 25 6-84-112. Limitation on liability.

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

32  
 33 6-84-113. Liberal construction.

34 This chapter shall be liberally construed to comply with the  
 35 requirement of 26 U.S.C. § 529 and related regulations as in effect on  
 36 ~~January 1, 1999~~ February 1, 2003.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

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