

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/20/97

A Bill

ACT 1309 OF 1997
SENATE BILL 707

4
5 By: Senator Brown
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7

For An Act To Be Entitled

8
9 "ARKANSAS TAX-DEFERRED TUITION SAVINGS PROGRAM ACT; AND
10 FOR OTHER PURPOSES."

Subtitle

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12
13 "ARKANSAS TAX-DEFERRED TUITION SAVINGS
14 PROGRAM ACT."
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. This act shall be known and may be cited as the "Arkansas
19 Tax-Deferred Tuition Savings Program Act of 1997."
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21 SECTION 2. There is hereby created and established a qualified state
22 tuition program known as the Arkansas Tax-Deferred Tuition Savings Program, as
23 defined in Internal Revenue Code (11 U.S.C. §§ 101, et seq.) § 529, as in
24 effect on January 1, 1997, to be administered by the Arkansas Teachers
25 Retirement System. It is the intent of the legislature that those residents
26 of this state desiring to provide a means for their family members for
27 attending post-secondary institutions of higher education within or without
28 the State of Arkansas have the greatest degree possible of tax-deferral for
29 cash contributions and distributions as permitted under the Internal Revenue
30 Code.
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32 SECTION 3. Any individual residing in this state may make cash
33 contributions to an account established under this act for the purpose of
34 meeting the qualified higher education expenses of the designated beneficiary
35 of the account. Contributions causing the balance of the account to
36 immediately exceed the remaining qualified higher education expenses of the

1 designated beneficiary shall be subject to a penalty equal to five percent
2 (5%) of such excess contributions, payable to the general fund of the state.

3
4 SECTION 4. All funds contributed pursuant to this act shall be held,
5 invested and accounted for by the Arkansas Teachers Retirement System. The
6 funds shall be segregated from the other funds of the Arkansas Teachers
7 Retirement System, but shall be invested in the same manner as it invests
8 funds for members of the system. The Arkansas Teachers Retirement System
9 shall maintain a separate account for each designated beneficiary and shall
10 account separately at least annually by January 31, calculated as of the end
11 of the calendar year, to each contributor for all contributions, earnings,
12 distributions or other transactions affecting each account of the contributor.
13 No interest of any person in any account or portion thereof may be pledged as
14 security for a loan.

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16 SECTION 5. (a) Except as otherwise provided in this subsection, no
17 amount shall be included in gross income of a designated beneficiary under
18 this program or a contributor to such program on behalf of a designated
19 beneficiary with respect to any contribution, distribution or earnings under
20 the program. Any distribution under the program shall be included in the
21 gross income of the distributee in the manner substantially similar to that
22 provided by federal law, to the extent it is not excluded from gross income
23 under any other provision of law. The provisions of the preceding sentence
24 shall not apply to that portion of any distribution which, within sixty (60)
25 days of such distribution, is transferred to the credit of another designated
26 beneficiary under this program who is a member of the family of the designated
27 beneficiary with respect to which the contributions were made.

28 (b) Any change in the designated beneficiary under this program shall
29 not be treated as a distribution if the new designated beneficiary is a member
30 of the family of the old designated beneficiary. If and to the extent a
31 contributor receives a refund of earnings from an account that is not used for
32 the qualified higher education expenses of the designated beneficiary, and is
33 not refunded due to the death or disability of the designated beneficiary, or
34 is not made on account of a scholarship or an allowance or payment described
35 in § 135(d)(1)(B) or (C) of the Internal Revenue Code as in effect January 1,
36 1997, to the extent the amount of such refund does not exceed the amount of

1 the said Scholarship, allowance or payment, said refunded earnings shall be
2 subject to a penalty equal to ten percent (10%) of such refunded earnings.

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4 SECTION 6. The contributor to the account may designate distributions
5 to be made to the designated beneficiary or to the contributor at such times
6 and in such amounts as the contributor may elect. If and in the event the
7 contributor dies while a balance remains in the account of the designated
8 beneficiary, the designated beneficiary may designate distributions to himself
9 or herself in such amounts and at such times as he or she may elect.

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11 SECTION 7. For purposes of this act,

12 (a) "Designated beneficiary" means the individual designated at the
13 commencement of participation in this program as the beneficiary of amounts
14 paid (or to be paid) to the program; in the case of a change in beneficiaries,
15 the individual who is the new beneficiary; and in the case of an interest in
16 this program purchased by a state or local government or an organization
17 described in 11 U.S.C. § 501(c)(3) as in effect January 1, 1997, and exempt
18 from taxation under 11 U.S.C. § 501(a) as in effect on January 1, 1997, as
19 part of a scholarship program operated by such government or organization, the
20 individual receiving such interest as a scholarship.

21 (b) "Member of family" has the same meaning given such term in 11
22 U.S.C. § 2032A(3)(2) as in effect on January 1, 1997.

23 (c) "Qualified higher education expenses" means tuition, fees, books,
24 supplies, and equipment required for the enrollment or attendance of a
25 designated beneficiary at an eligible educational institution, as defined in
26 11 U.S.C. § 130(c)(3), as in effect on January 1, 1997 including, but not
27 limited to, post-graduate work or degrees.

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29 SECTION 8. An interest in a qualified state tuition program shall not
30 be treated as debt for purposes of 11 U.S.C. § 514.

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32 SECTION 9. The Arkansas Teacher Retirement System, in administering the
33 program created by this act, and in investing funds contributed pursuant to
34 this act, shall use that standard of care described in the Prudent Investor
35 Rule presently codified as Arkansas Code § 24-3-411. Any person having an
36 interest in any account and who is damaged by reason of the provable failure

1 of the Arkansas Teacher Retirement System to comply with the Prudent Investor
2 Rule may file a claim with the Arkansas Claims Commission as provided by law.

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4 SECTION 10. As compensation for services performed by the Arkansas
5 Teacher Retirement System in carrying out its duties under this act, said
6 system shall be entitled to collect an annual fee equal to one percent (1%) of
7 the principal portion of each account being administered (prorated, if need
8 be, by reason of administering a particular account for only a portion of a
9 year). Said fee may be taken from each such account by the system and
10 transferred to its general funds or to such other of the systems own accounts
11 as the system may elect and shall be reported on the annual accounting for
12 each account required by Section 4. Similarly, the system may reimburse
13 itself for any out of pocket expenses incurred by it in the administration of
14 any individual account, such expense reimbursement to be taken directly from
15 the appropriate account and accounted for as in the case of the fee mentioned
16 in the preceding sentence.

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18 SECTION 11. All provisions of this act of a general and permanent
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
20 Code Revision Commission shall incorporate the same in the Code.

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22 SECTION 12. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

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28 SECTION 13. All laws and parts of laws in conflict with this act are
29 hereby repealed.

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/s/Brown

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32 APPROVED: 4-10-97

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