

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

A Bill

HOUSE BILL 1754

4
5 By: Representatives Young and Molinaro

For An Act To Be Entitled

9 "AN ACT TO ESTABLISH THE ARKANSAS PREPAID COLLEGE TUITION
10 PROGRAM."

Subtitle

13 "TO ESTABLISH THE ARKANSAS PREPAID
14 COLLEGE TUITION PROGRAM."

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18 SECTION 1. LEGISLATIVE FINDINGS AND PURPOSE.

19 The General Assembly recognizes that educational opportunity at the
20 postsecondary level is critical to the social development and economic health
21 of this state. It further recognizes that because Arkansas's population is
22 growing rapidly and is increasingly diverse, educational opportunity will best
23 be ensured by providing greater financial accessibility to institutions of
24 higher education. Accordingly, it is the purpose of this act to establish a
25 program through which many of the costs associated with postsecondary
26 education may be paid in advance and fixed at a guaranteed level for the
27 duration of undergraduate enrollment.

29 SECTION 2. TITLE.

30 This act shall be known and may be cited as "The Arkansas Prepaid Higher
31 Education Tuition Act of 1997".

33 SECTION 3. DEFINITIONS.

34 As used in this act:

- 35 (1) "Board" means the Arkansas Prepaid Higher Education Tuition Board;
36 (2) "Fund" means the Arkansas Prepaid Higher Education Tuition Fund;

1 (3) "Institution of higher education" means any public university,
 2 college, technical college, community college, or technical institute in this
 3 state;

4 (4) "Prepaid tuition contract" means a contract entered into by the
 5 board and a purchaser pursuant to this act to provide for the payment of
 6 higher education tuition and required fees of a qualified beneficiary;

7 (5) "Program" means the Arkansas Prepaid Higher Education Tuition
 8 Program;

9 (6) "Purchaser" means a person who is obligated to make payments under
 10 a prepaid tuition contract;

11 (7) "Qualified beneficiary" means:

12 (A) A resident of this state at the time a purchaser enters into
 13 a prepaid tuition contract on behalf of the resident;

14 (B) A nonresident who is the child of a noncustodial parent who
 15 is a resident of this state at the time that such parent enters into a prepaid
 16 tuition contract on behalf of the child; or

17 (C) A graduate of an accredited high school in this state who is
 18 a resident of this state at the time he or she is designated to receive the
 19 benefits of the prepaid tuition contract.

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21 SECTION 4. ARKANSAS PREPAID HIGHER EDUCATION TUITION PROGRAM.

22 (a) There is established an Arkansas Prepaid Higher Education Tuition
 23 Program to provide a method through which the costs of tuition and required
 24 fees for a qualified beneficiary may be paid in advance of enrollment in an
 25 institution of higher education at a rate lower than the projected
 26 corresponding costs at the time of actual enrollment.

27 (b) Such payments by the purchaser of a prepaid tuition contract shall
 28 be combined and invested in a manner that yields, at a minimum, sufficient
 29 interest to generate the difference between the prepaid amount and the costs
 30 of tuition and required fees at the time of actual enrollment. Students who
 31 enroll in an institution of higher education pursuant to this act shall be
 32 charged no tuition or fees in excess of the terms delineated in the prepaid
 33 tuition contract.

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35 SECTION 5. PURCHASERS AND BENEFICIARIES - PREPAID TUITION CONTRACT.

36 (a)(1) The purchaser of a prepaid tuition contract may designate a new

1 beneficiary instead of the original beneficiary if the new beneficiary meets
 2 the requirements of a qualified beneficiary on the date the designation is
 3 changed.

4 (2) The board may adjust the terms of the contract so that the
 5 purchaser is required to pay the amount the purchaser would have been required
 6 to pay had the purchaser originally designated the new beneficiary as the
 7 beneficiary, taking into account any payments made before the date the
 8 designation is changed.

9 (b) The purchaser of a prepaid tuition contract may not sell the
 10 contract.

11 (c) If a beneficiary is awarded a scholarship, the terms of which cover
 12 the benefits included in the prepaid tuition contract, moneys paid for the
 13 purchase of the contract shall be returned to the purchaser in semester
 14 installments coinciding with the matriculation by the beneficiary in amounts
 15 of either the original purchase price plus five percent (5%) compounded
 16 interest, or the prevailing costs of tuition and required fees at the
 17 institution of higher education, whichever is less.

18 (d) Nothing in this act shall be construed as a guarantee that a
 19 qualified beneficiary will be admitted to an institution of higher education
 20 or will be allowed to continue enrollment at an institution of higher
 21 education after admission or will be graduated from an institution of higher
 22 education.

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24 SECTION 6. ARKANSAS PREPAID HIGHER EDUCATION TUITION PROGRAM BOARD.

25 (a)(1) The Arkansas Prepaid Higher Education Tuition Program shall be
 26 administered by the Arkansas Prepaid Higher Education Tuition Board, which
 27 shall be a body politic and corporate and shall have all the powers of a
 28 corporate body, subject to the Constitution and laws of the State of Arkansas,
 29 for the purposes delineated in this act.

30 (2) The board shall consist of seven (7) members and shall be
 31 composed as follows:

32 (A) The Chief Fiscal Officer of the State;

33 (B) The Treasurer of State;

34 (C) The Chairman of the State Board of Higher Education;

35 (D) The President of the Board of Trustees of the

36 University of Arkansas; and

1 (E) Three (3) members appointed by the Governor, subject to
 2 confirmation by the Senate, who possess knowledge, skill, and experience in
 3 the areas of accounting, actuary, risk management, or investment management.

4 (3) Members appointed by the Governor shall serve terms of three
 5 (3) years except that, in making the initial appointments, the Governor shall
 6 appoint one (1) member to serve for one (1) year, one (1) member to serve for
 7 two (2) years, and one (1) member to serve for three (3) years. Any person
 8 appointed to fill any subsequent vacancy on the board shall be appointed in a
 9 like manner and shall serve for only the unexpired term. Any member shall be
 10 eligible for reappointment and shall serve until a successor qualifies.

11 (4) The Governor shall appoint a member of the board to serve as
 12 the initial chairman of the board. Thereafter, the board shall elect a
 13 chairman annually and such other officers as it deems necessary.

14 (b) The board shall hold regular quarterly meetings in the city of
 15 Little Rock and other meetings at places and times scheduled by the board at a
 16 quarterly meeting and called by the chairman.

17 (c) Appointed members of the board shall serve without pay but shall be
 18 reimbursed pursuant to § 25-16-901 et seq. for their actual expenses incurred
 19 in attending meetings of the board or in performing other work of the board
 20 when that work is approved by the chairman.

21 (d) The board shall appoint an executive director to serve as the chief
 22 administrative and operational officer of the program and to perform other
 23 duties as assigned by the board.

24 (e) The General Assembly may appropriate to the board an amount
 25 sufficient to cover the program's administrative costs for any fiscal
 26 biennium.

27

28 SECTION 7. POWERS OF THE BOARD.

29 The board shall have the powers necessary to implement the provisions of
 30 this act, including, but not limited to the powers to:

- 31 (1) Promulgate regulations;
- 32 (2) Sue and be sued;
- 33 (3) Make and execute contracts and other necessary instruments;
- 34 (4) Enter into agreements or other transactions with federal, state,
 35 and local agencies, including institutions of higher education;
- 36 (5) Invest funds not required for immediate disbursement;

1 (6) Appear in its own behalf before boards, commissions, or other
2 governmental agencies;

3 (7) Contract for necessary goods and services, employ necessary
4 personnel, and engage the services of private consultants, actuaries,
5 managers, legal counsel, and auditors for administrative or technical
6 assistance;

7 (8) Solicit and accept gifts, grants, loans, and other aid from any
8 source or participate in any other way in any government program to carry out
9 the purposes of this act;

10 (9) Require and collect administrative fees and charges in connection
11 with any transaction and impose reasonable penalties, including default, for
12 delinquent payments or for entering into a prepaid tuition contract on a
13 fraudulent basis;

14 (10) Procure insurance against any loss in connection with the property,
15 assets, and activities of the fund or the board and employees and agents of
16 the board;

17 (11) Impose reasonable time limits on use of the benefits provided by
18 the program; provided, however, that any such limitation shall be specified
19 within the prepaid tuition contract;

20 (12) Delineate the terms and conditions under which a prepaid tuition
21 contract may be terminated by the purchaser or by the board and when payments
22 may be withdrawn from the fund and may impose reasonable fees and charges for
23 such withdrawal; provided however, that such terms and conditions shall be
24 specified within the prepaid tuition contract;

25 (13) Provide for the receipt of contributions in lump sums or
26 installment payments;

27 (14) Establish other policies, procedures, and criteria to implement
28 and administer the provisions of this act.

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30 SECTION 8. ARKANSAS PREPAID HIGHER EDUCATION TUITION TRUST FUND.

31 (a) There is established on the books of the Treasurer of State,
32 Auditor of State, and the Chief Fiscal Officer of the State a fund to be known
33 as the Arkansas Prepaid Higher Education Tuition Trust Fund.

34 (b) Such fund shall consist of state appropriations, moneys acquired
35 from other governmental or private sources, moneys remitted in accordance with
36 prepaid tuition contracts, and interest income, there to be used for program

1 administration and disbursements.

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3 SECTION 9. ACTUARIAL SOUNDNESS AND ADMINISTRATION OF THE FUND.

4 (a) The board shall administer the fund in a manner that is
 5 sufficiently actuarially sound to defray the obligations of the program. The
 6 board shall annually evaluate or cause to be evaluated the actuarial soundness
 7 of the fund. If the board perceives a need for additional assets in order to
 8 preserve actuarial soundness, the board may adjust the terms of subsequent
 9 prepaid tuition contracts to ensure such soundness.

10 (b) The board shall establish a comprehensive investment plan for the
 11 purposes of this act. The comprehensive investment plan shall specify the
 12 investment policies to be utilized by the board in its administration of the
 13 fund. The board may place assets of the fund in savings accounts or use the
 14 same to purchase fixed or variable life insurance or annuity contracts,
 15 securities, evidence of indebtedness, or other investment products pursuant to
 16 the comprehensive investment plan and in such proportions as may be designated
 17 under that plan. Such insurance, annuity, savings, or investment products
 18 shall be underwritten and offered in compliance with the applicable federal
 19 and state laws and regulations by persons who are duly authorized by
 20 applicable federal and state authorities. Within the comprehensive investment
 21 plan, the board may authorize investment vehicles, or products incident
 22 thereto, as may be available or offered by qualified companies or persons.

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24 SECTION 10. REQUEST OF RULINGS FROM INTERNAL REVENUE SERVICE AND
 25 SECURITIES AND EXCHANGE COMMISSION.

26 (a) The board shall request rulings from:

27 (1) The Internal Revenue Service regarding the tax consequences
 28 to purchasers and beneficiaries of participating in the program; and

29 (2) The Securities and Exchange Commission regarding the
 30 application of federal securities laws to the fund.

31 (b) The board shall inform a purchaser of the status of the requests
 32 under subsection (a) of this section before the purchaser enters into a
 33 prepaid tuition contract.

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35 SECTION 11. EXEMPTION FROM CREDITOR'S CLAIMS.

36 Monies paid into the fund shall be exempt from claims of creditors of a

1 purchaser or qualified beneficiary.

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3 SECTION 12. ANNUAL REPORT - LEGISLATIVE AUDIT.

4 (a)(1) The board shall annually prepare or cause to be prepared a
 5 report setting forth in appropriate detail an accounting of the fund and a
 6 description of the financial condition of the program at the close of each
 7 fiscal year.

8 (2) Such report shall be submitted to the Governor, the Chairman
 9 of the Legislative Council, the Chairmen of the House and Senate Education
 10 Committees, and members of the State Board of Higher Education on or before
 11 September 30 each year.

12 (3) The board shall further make the report available to
 13 purchasers of prepaid tuition contracts and may charge a reasonable fee for
 14 each copy furnished under this subdivision.

15 (b) The accounts of the fund shall be subject to annual audits by the
 16 Division of Legislative Audit.

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18 SECTION 13. TERMINATION OR MODIFICATION OF THE PROGRAM.

19 (a)(1) If the board determines the program is financially infeasible,
 20 it shall notify the Governor and the General Assembly and recommend that the
 21 program be modified or terminated.

22 (2) In the event that the program is modified or terminated, any
 23 qualified beneficiary who has been accepted by and is enrolled or is within
 24 three (3) years of enrollment in an institution of higher education shall be
 25 entitled to exercise the benefits for which he has contracted under the terms
 26 of a prepaid tuition contract.

27 (3) All other prepaid tuition contract holders shall receive a
 28 refund of the amount paid in and an additional amount in the nature of
 29 interest at a rate that corresponds, at a minimum, to the prevailing interest
 30 rates for savings accounts provided banks and savings and loan associations.

31 (b) The State shall meet the obligations of the board to qualified
 32 beneficiaries if moneys in the fund, or insurance procured for such
 33 contingency, fail to offset the obligations of the board under prepaid tuition
 34 contracts.

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36 SECTION 14. All provisions of this act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

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4 SECTION 15. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 act are declared to be severable.

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10 SECTION 16. All laws and parts of laws in conflict with this act are
11 hereby repealed.

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