

1 State of Arkansas
2 91st General Assembly
3 Second Extraordinary Session, 2018
4

A Bill

Call Item 9
SENATE BILL 6

5 By: Senator Rapert
6 By: Representative Gillam
7

For An Act To Be Entitled

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

Subtitle

14 TO AMEND THE ARKANSAS TAX-DEFERRED
15 TUITION SAVINGS PROGRAM ACT.

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17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code §§ 6-84-102 and 6-84-103 are amended to read
21 as follows:

22 6-84-102. Purpose.

23 It is the intent and purpose of this chapter to create and establish
24 the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. §
25 529, as in effect on January 1, ~~2017~~ 2018, to be administered by the Section
26 529 Plan Review Committee through the adoption of rules and regulations for
27 the administration of the program.

28
29 6-84-103. Definitions.

30 As used in this chapter:

31 (1) "Account" means an account established in accordance with
32 this chapter;

33 (2) "Account owner" means the person who, under this chapter or
34 the rules promulgated by the Section 529 Plan Review Committee, is entitled
35 to select or change the designated beneficiary of an account, to designate
36 any person other than the designated beneficiary to whom funds may be paid



1 from the account, or to receive distributions from the account if no other
2 person is designated;

3 (3) "Act" means the Arkansas Tax-Deferred Tuition Savings
4 Program Act, § 6-84-101 et seq.;

5 (4)(A) "Arkansas Tax-Deferred Tuition Savings Program Trust" or
6 "trust" means the trust created under § 6-84-104.

7 (B) Participation in the trust shall be open to Arkansas
8 residents and nonresidents alike;

9 (5) "Committee" means the Section 529 Plan Review Committee,
10 provided for in § 6-84-105, that shall oversee the administration of the
11 Arkansas Tax-Deferred Tuition Savings Program and ensure that the program
12 complies with the provisions of this chapter and acts in accordance with 26
13 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018;

14 (6) "Contribution" means:

15 (A) Any payment directly allocated to an account for the
16 benefit of a designated beneficiary or used to pay administrative fees
17 associated with an account; and

18 (B) That portion of any rollover amount treated as a
19 contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018;

20 (7) "Contributor" means any person making a contribution to an
21 account;

22 (8) "Designated beneficiary" means, except as provided in § 6-
23 84-108, the individual designated at the time the account is opened as having
24 the right to receive a qualified withdrawal for the payment of qualified
25 higher education expenses or, if the designated beneficiary is replaced in
26 accordance with § 6-84-108, the replacement;

27 (9) "Higher education institution" means an eligible education
28 institution as defined in 26 U.S.C. § 135(c)(3), as in effect on January 1,
29 ~~2017~~ 2018;

30 (10) "Member of the family" shall have the same meaning as is
31 contained in 26 U.S.C. § 529~~(e)~~, as in effect on January 1, ~~2017~~ 2018;

32 (11) "Nonqualified withdrawal" means a withdrawal from an
33 account that is not:

34 (A) A qualified withdrawal;

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

1 (C) A withdrawal made as the result of a scholarship,
2 allowance, or payment described in 26 U.S.C. § 135(d)(1)(B) or (d)(1)(C), as
3 in effect on January 1, ~~2017~~ 2018, received by the designated beneficiary but
4 only to the extent of the amount of the scholarship, allowance, or payment;
5 or

6 (D) A rollover or change in the designated beneficiary;

7 (12) "Person" means a person as defined in 26 U.S.C. § 529, as
8 in effect on January 1, ~~2017~~ 2018;

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

11 (14) "Qualified higher education expenses" means tuition and
12 other permitted expenses as set forth in 26 U.S.C. § 529~~(e)~~, as in effect on
13 January 1, ~~2017~~ 2018, for the enrollment or attendance of a designated
14 beneficiary ~~at a higher education institution~~;

15 (15) "Qualified tuition program" means a qualified tuition
16 program as defined in 26 U.S.C. § 529~~(b)~~, as in effect on January 1, ~~2017~~
17 2018;

18 (16) "Qualified withdrawal" means a withdrawal from an account
19 to pay the qualified higher education expenses of the designated beneficiary
20 but only if the withdrawal is made in accordance with the requirements of the
21 program; and

22 (17) "Rollover" means a disbursement or transfer from an account
23 that is transferred to or deposited within sixty (60) calendar days of the
24 transfer:

25 (A) into ~~into~~ Into an account of the same person for the
26 benefit of the same designated beneficiary; ~~or~~

27 (B) another ~~another~~ To the credit of another person as a
28 designated beneficiary if the transferee account was created under this
29 chapter or under another qualified tuition program maintained in accordance
30 with 26 U.S.C. § 529~~(e)~~, as in effect on January 1, ~~2017~~, 2018; or

31 (C)(i) Before January 1, 2026, into an ABLE account under
32 26 U.S.C. § 529A(e)(6), as in effect on January 1, 2018, of the designated
33 beneficiary or a member of the family of the designated beneficiary.

34 (ii) Subdivision (17)(C)(i) of this section does not
35 apply to so much of a distribution which, when added to all other
36 contributions made to the ABLE account for the taxable year, exceeds the

1 limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1,
2 2018.

3
4 SECTION 2. Arkansas Code §§ 6-84-105 and 6-84-106 are amended to read
5 as follows:

6 6-84-105. Administration – Authority – Powers.

7 (a) This chapter shall be administered by the Section 529 Plan Review
8 Committee, which shall be composed of:

- 9 (1) The Director of the Department of Higher Education;
- 10 (2) The Executive Director of the Arkansas Teacher Retirement
11 System; and
- 12 (3) The Treasurer of State.

13 (b) The committee shall adopt such rules and regulations as it deems
14 necessary and proper to administer this chapter and to ensure the compliance
15 of the Arkansas Tax-Deferred Tuition Savings Program with 26 U.S.C. § 529, as
16 in effect on January 1, ~~2017~~ 2018.

17 (c) The committee shall have the following powers, duties, and
18 functions:

19 (1) To establish, develop, implement, and maintain the program
20 in a manner consistent with the provisions of this chapter and 26 U.S.C. §
21 529, as in effect on January 1, ~~2017~~ 2018, and to obtain the benefits
22 provided by 26 U.S.C. § 529 for the program, account owners, and designated
23 beneficiaries;

24 (2) To adopt rules and regulations for the general
25 administration of the program;

26 (3) To maintain, invest, and reinvest the funds contributed into
27 the program consistent with the investment restrictions established by the
28 committee and the standard of care described in the prudent investor rule
29 under § 24-2-610; and

30 (4)(A) To make and enter into any and all contracts, agreements,
31 or arrangements and to retain, employ, and contract for the services of
32 financial institutions, depositories, consultants, broker dealers, investment
33 advisors or managers, third-party plan administrators, and research,
34 technical, and other services necessary or desirable for carrying out the
35 purposes of this chapter.

36 (B) Contracts entered into by the committee may be for a

1 term of from one (1) to ten (10) years.

2 (d) The Treasurer of State shall provide office space, staff, and
3 materials for the committee.

4 (e) A member of the committee may expend funds appropriated for the
5 member of the committee to provide the following for the benefit of the
6 Arkansas Tax-Deferred Tuition Savings Program:

- 7 (1) Office space;
- 8 (2) Staffing;
- 9 (3) Materials;
- 10 (4) Marketing;
- 11 (5) Education;
- 12 (6) Financial literacy programs; and
- 13 (7) Outreach measures.

14

15 6-84-106. Investment direction.

16 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2017~~
17 2018, no person shall have the right to direct the investment of any
18 contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings
19 Program.

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21 SECTION 3. Arkansas Code §§ 6-84-108 and 6-84-109 are amended to read
22 as follows:

23 6-84-108. Naming of designated beneficiary and transfers of accounts.

24 (a) An account owner shall have the right to name the designated
25 beneficiary of an account and at any time to change the designated
26 beneficiary of an account to another individual who is a member of the family
27 of the former designated beneficiary.

28 (b) At the direction of an account owner, all or a portion of an
29 account may be transferred to another account of which the designated
30 beneficiary is a member of the family of the designated beneficiary of the
31 transferee account if the transferee account was created by this chapter or
32 under another qualified tuition program maintained in accordance with 26
33 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018.

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35 6-84-109. Account withdrawals.

36 (a) Withdrawal from an account may be made on thirty (30) days'

1 written notice by the account owner to the Section 529 Plan Review Committee
2 or on shorter notice as the committee may by regulation provide.

3 (b)(1) An account withdrawal paid to or for the benefit of any person
4 during any calendar year shall be reported to the person and to the Internal
5 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 January 1, ~~2017~~ 2018, and
8 contain such information as is required by law.

9

10 SECTION 4. Arkansas Code § 6-84-111 is amended to read as follows:

11 6-84-111. Funds exempt from tax – Definitions.

12 (a)(1) Except as otherwise indicated in this chapter, interest,
13 dividends, and capital gains from funds invested in the Arkansas Tax-Deferred
14 Tuition Savings Program or a tax-deferred tuition savings program established
15 by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018,
16 shall be exempt from Arkansas income taxes.

17 (2) For purposes of this section:

18 (A) “Taxpayer employee” means an employee of an employer
19 with an account established under this chapter; and

20 (B) “Taxpayer employer” means a person that employs an
21 individual with an account established under this chapter;

22 (b)(1) For tax years beginning on or after January 1, 2005,
23 contributions to a tuition savings account established under this program may
24 be deducted from the taxpayer’s adjusted gross income for the purpose of
25 calculating Arkansas income tax under § 26-51-403(b).

26 (2)(A) The deductible contributions shall not exceed five
27 thousand dollars (\$5,000) per taxpayer employee in any tax year.

28 (B) If the aggregate amount of contributions by a taxpayer
29 during a tax year exceeds the limitation under subdivision (b)(2)(A) of this
30 section, the unused aggregate amount may be carried forward to the next
31 succeeding four (4) tax years.

32 (C) A taxpayer employer may make a matching contribution
33 to the account of a taxpayer employee with an account established under this
34 chapter that does not exceed five hundred dollars (\$500) per contributing
35 employee per year.

36 (3) Contributions to this program that have been deducted from

1 the taxpayer employee’s adjusted gross income for prior tax years shall be
2 subject to recapture from the taxpayer employee if the taxpayer employee:

3 (A) Makes a subsequent nonqualified withdrawal from the
4 account; or

5 (B) Rolls the account over to a tax-deferred tuition
6 savings program established by another state or institution under 26 U.S.C. §
7 529, as in effect on January 1, ~~2017~~ 2018.

8 (4)(A) The contribution shall be recaptured by adding the amount
9 previously deducted, not to exceed the amount of the nonqualified withdrawal
10 or rollover, to the taxpayer employee’s adjusted gross income for the tax
11 year in which the nonqualified withdrawal or rollover occurred.

12 (B) The nonqualified withdrawal or rollover shall be
13 taxable to the taxpayer employee, party, account owner, or designated
14 beneficiary who actually makes the nonqualified withdrawal or rollover.

15 (c)(1)(A) For tax years beginning on or after January 1, 2017,
16 contributions to a tuition savings account established under this program or
17 a tax-deferred tuition savings program established by another state under 26
18 U.S.C. § 529, as it existed on January 1, 2017, may be deducted from the
19 taxpayer’s adjusted gross income for the purpose of calculating Arkansas
20 income tax under § 26-51-403(b).

21 (B) A taxpayer may not deduct from the taxpayer’s adjusted
22 gross income a contribution to a tax-deferred tuition savings program
23 established by another state if the taxpayer deducted the contribution in
24 another state or on another’s state’s income taxes.

25 (2)(A) The deductible contributions for a tuition savings
26 account established under this chapter shall not exceed five thousand dollars
27 (\$5,000) per taxpayer in any tax year.

28 (B) If the aggregate amount of contributions by a taxpayer
29 during a tax year exceeds the limitation under subdivision (c)(2)(A) of this
30 section, the unused aggregate amount may be carried forward to the next
31 succeeding four (4) tax years.

32 (C) The deductible contributions for a tax-deferred
33 tuition savings program established by another state under 26 U.S.C. § 529,
34 as it existed on January 1, 2017, shall not exceed three thousand dollars
35 (\$3,000) per taxpayer in any tax year.

36 (D) The deductible contributions for a tax-deferred

1 tuition savings program established by another state under 26 U.S.C. § 529,
2 as it existed on January 1, 2017, that are rolled over into a tuition savings
3 account established under this chapter shall not exceed seven thousand five
4 hundred dollars (\$7,500) per taxpayer in the tax year in which they were
5 rolled.

6 (d)(1)(A) For tax years beginning on or after January 1, 2018,
7 contributions to a tuition savings account established under the program or a
8 tax-deferred tuition savings program established by another state under 26
9 U.S.C. § 529, as it existed on January 1, 2018, may be deducted from the
10 taxpayer's adjusted gross income for the purpose of calculating Arkansas
11 income tax under § 26-51-403(b).

12 (B) A taxpayer may not deduct from the taxpayer's adjusted
13 gross income a contribution to a tax-deferred tuition savings program
14 established by another state if the taxpayer deducted the contribution in
15 another state or on another's state's income taxes.

16 (2)(A) The deductible contributions for a tuition savings
17 account established under this chapter shall not exceed five thousand dollars
18 (\$5,000) per taxpayer in any tax year.

19 (B) If the aggregate amount of contributions by a taxpayer
20 during a tax year exceeds the limitation under subdivision (d)(2)(A) of this
21 section, the unused aggregate amount may be carried forward to the next
22 succeeding four (4) tax years.

23 (C) The deductible contributions for a tax-deferred
24 tuition savings program established by another state under 26 U.S.C. § 529,
25 as it existed on January 1, 2018, shall not exceed three thousand dollars
26 (\$3,000) per taxpayer in any tax year.

27 (D) The deductible contributions for a tax-deferred
28 tuition savings program established by another state under 26 U.S.C. § 529,
29 as it existed on January 1, 2018, that are rolled over into a tuition savings
30 account established under this chapter shall not exceed seven thousand five
31 hundred dollars (\$7,500) per taxpayer in the tax year in which they were
32 rolled.

33 ~~(d)(1)~~ (e)(1) Qualified withdrawals from a tuition savings account
34 established under this program or a tax-deferred tuition savings program
35 established by another state under 26 U.S.C. § 529, as in effect on January
36 1, 2017 2018, will be exempt from Arkansas income tax with respect to the

1 designated beneficiary's income.

2 (2)(A) Nonqualified withdrawals from a tuition savings account
3 established under this program or a tax-deferred tuition savings program
4 established by another state under 26 U.S.C. § 529, as in effect on January
5 1, ~~2017~~ 2018, will be subject to Arkansas income tax.

6 (B) The nonqualified withdrawal will be taxable to the
7 party, account owner, or designated beneficiary who actually makes the
8 withdrawal.

9 ~~(e)~~ (f) Any earnings on the contribution that are included in the
10 refund will be subject to Arkansas income tax if an account owner receives a
11 refund of contributions to a tuition savings account established under this
12 program or a tax-deferred tuition savings program established by another
13 state under 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018, because of
14 either:

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

16 (2) A scholarship, allowance, or payment described in 26 U.S.C.
17 § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, ~~2017~~ 2018, received
18 by the designated beneficiary.

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20 SECTION 5. Arkansas Code § 6-84-113 is amended to read as follows:

21 6-84-113. Liberal construction.

22 This chapter shall be liberally construed to comply with the
23 requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018.

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25 SECTION 6. EFFECTIVE DATE. This act is effective for tax years
26 beginning on or after January 1, 2018.

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