

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S2/23/99 S2/25/99 H3/17/99

A Bill

SENATE BILL 532

5 By: Senators Brown, D. Malone, Riggs, Roebuck, Russ, Mahony, Argue, Hopkins
6
7

For An Act To Be Entitled

9 "AN ACT TO ESTABLISH THE ARKANSAS TAX-DEFERRED TUITION
10 SAVINGS PROGRAM, TO REPEAL TITLE 6, CHAPTER 62,
11 SUBCHAPTER 9 AND TITLE 16, CHAPTER 83, SUBCHAPTER 1 OF
12 THE ARKANSAS CODE; AND FOR OTHER PURPOSES."
13

Subtitle

14 "ARKANSAS TAX-DEFERRED TUITION SAVINGS
15 PROGRAM ACT OF 1999."
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Title. This Act shall be known and may be cited as the
22 "Arkansas Tax-Deferred Tuition Savings Program Act of 1999."
23

24 SECTION 2. Purpose. It is the intent and purpose of this act to create
25 and establish the Arkansas Tax-Deferred Tuition Savings Program pursuant to
26 § 529 of the United States Code as in effect on January 1, 1999, to be
27 administered by the Arkansas Teacher Retirement System through the adoption of
28 rules and regulations for the administration of the Program.
29

30 SECTION 3. Definitions. For purposes of this act:

31 (a) "Account" means an individual trust account or savings account
32 established in accordance with this act.

33 (b) "Account owner" means the individual or individuals other than the
34 designated beneficiary identified at the time the account is opened as having
35 the right to withdraw funds from the account.

36 (c) "Act" means the "Arkansas Tax-Deferred Tuition Savings Program Act

1 of 1999."

2 (d) "Arkansas Tax-Deferred Tuition Savings Program Trust" or "Trust"
3 means the trust created under Section 4 of this act. Participation in the
4 Trust shall be open to Arkansas residents and non-residents alike.

5 (e) "Committee" means the investment committee provided for in Section
6 5 of this act, which shall oversee the administration of the Program and
7 ensure that the Program complies with the provisions of this act and acts in
8 accordance with § 529 of the Internal Revenue Code.

9 (f) "Designated beneficiary" means, except as provided in Section 10 of
10 this act, the individual designated at the time the account is opened as
11 having the right to receive a qualified withdrawal for the payment of
12 qualified higher education expenses or, if such designated beneficiary is
13 replaced in accordance with Section 10 of this act, such replacement.

14 (g) "Higher education institution" means an eligible education
15 institution as defined in § 135(c)(3) of Title 26 of the United States Code as
16 in effect on January 1, 1999.

17 (h) "Member of the family" shall have the same meaning as contained in
18 § 529(e) of Title 26 of the United States Code as in effect on January 1,
19 1999.

20 (i) "Nonqualified withdrawal" means a withdrawal from an account that
21 is not:

22 (1) A qualified withdrawal;

23 (2) A withdrawal made as the result of the death or disability of
24 the designated beneficiary;

25 (3) A withdrawal made as the result of a scholarship (or
26 allowance or payment described in § 135(d)(1)(B) or (C) of Title 26 of the
27 United States Code as in effect on January 1, 1999 received by the designated
28 beneficiary, but only to the extent of the amount of such scholarship,
29 allowance or payment; or

30 (4) A rollover or change in the designated beneficiary described
31 in Section 10 of this act.

32 (j) "Program" means the Arkansas Tax-Deferred Tuition Savings Program
33 established by this act.

34 (k) "Qualified higher education expenses" means tuition and other
35 permitted expenses as presently set forth in § 529(e) of Title 26 of the
36 United States Code as in effect on January 1, 1999 for the enrollment or

1 attendance of a designated beneficiary at a higher education institution.

2 (l) "Qualified withdrawal" means a withdrawal from an account to pay
3 the qualified higher education expenses of the designated beneficiary, but
4 only if the withdrawal is made in accordance with the requirements of the
5 Program.

6 (m) "System" means the Arkansas Teacher Retirement System, which is
7 organized and governed pursuant to Title 24, Chapter 7 of the Arkansas Code.

8
9 SECTION 4. Creation of the Arkansas Tax-Deferred Tuition Savings
10 Program Trust.

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

13 (b) The Executive Director of the System shall be the trustee of the
14 Trust.

15
16 SECTION 5. Administration - authority.

17 (a) This act shall be administered by the Arkansas Tax-Deferred Tuition
18 Savings Program Investment Committee, which shall be comprised of:

19 (1) The System's Investment Committee; and

20 (2) The Director of the Department of Higher Education.

21 (b) The Committee shall adopt such rules and regulations as it deems
22 necessary and proper to administer this act and to ensure the Program's
23 compliance with § 529 of Title 26 of the United States Code as in effect on
24 January 1, 1999.

25
26 SECTION 6. Powers of the Committee. The Committee shall have the
27 following powers, duties and functions:

28 (a) To establish, develop, implement and maintain the Program in a
29 manner consistent with the provisions of this act and § 529 of Title 26 of the
30 United States Code as in effect on January 1, 1999 to obtain the benefits
31 provided by such section for the Program and its participants;

32 (b) To adopt rules and regulations for the general administration of
33 the Program;

34 (c) To maintain, invest, and reinvest the funds contributed into the
35 Program consistent with the investment restrictions established by the
36 Committee and the standard of care described in the prudent investor rule

1 presently codified as Arkansas Code section 24-3-411; and

2 (d) To make and enter into any and all contracts, agreements or
3 arrangements and to retain, employ and contract for the services of financial
4 institutions, depositories, consultants, broker dealers, investment advisors
5 or managers, third party plan administrators, research and technical, and
6 other services necessary or desirable for carrying out the purposes of this
7 act. Such contracts entered into by the Committee may be for a term of from
8 one (1) to ten (10) years.

9
10 SECTION 7. The program.

11 (a) An account owner may establish an account by making an initial
12 contribution to the Program in the name of the designated beneficiary.

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

14 (c) Total contributions to all accounts shall not exceed those
15 reasonably necessary to provide for the qualified higher education expenses of
16 the beneficiary, and the Committee shall establish maximum contribution limits
17 applicable to Program accounts.

18 (d) Separate records and accounting shall be required by the Program
19 for each account and reports shall be made no less frequently than annually to
20 the account owner and the designated beneficiary.

21 (e) The Program shall be permitted to collect application, account or
22 administrative fees to defray the costs of the Program. The application,
23 account or administrative fees must be approved by the Committee.

24
25 SECTION 8. Investment direction.

26 (a) Except as permitted in § 529 of Title 26 of the United States Code
27 as in effect on January 1, 1999 and regulations thereunder as in effect on
28 January 1, 1999 no person shall have the right to direct the investment of any
29 contributions to or earnings from the Program.

30 (b) Neither the Program, the Committee and each of its members nor the
31 State shall insure any account or guarantee any rate of return or any interest
32 rate on any contribution; nor shall they or any one of them be liable for any
33 loss incurred by any person as a result of participating in the Program.

34
35 SECTION 9. Prohibitions.

36 (a) No account or any interest in an account shall be assignable or

1 pledged or otherwise used to secure or obtain a loan or other advancement.

2 (b) Total contributions to all accounts established on behalf of a
3 particular beneficiary in excess of those reasonably necessary to meet the
4 designated beneficiary's qualified higher education expenses are prohibited.

5
6 SECTION 10. Designated beneficiary.

7 (a) An account owner shall have the right at any time to change the
8 designated beneficiary of an account to another individual who is a member of
9 the family of the former designated beneficiary.

10 (b) An account owner shall have the right at any time to direct that
11 all or a portion of an account be transferred to the account of another
12 beneficiary if the designated beneficiaries are members of the same family.

13
14 SECTION 11. Account withdrawals - penalties.

15 (a) Withdrawal from an account may be made on thirty (30) days' written
16 notice to the Committee or on such shorter notice as the Committee may by
17 regulation provide. A withdrawal shall be designated as a qualified withdrawal
18 or a nonqualified withdrawal and the application shall provide such
19 information and be made on such forms as the Committee shall find are
20 necessary to enable the Committee to determine the nature of the withdrawal.

21 (b) An account withdrawal paid to or for the benefit of any person
22 during any calendar year shall be reported to the person and the Internal
23 Revenue Service. The report shall be made at the time and contain such
24 information as required by law.

25 (c) The Committee shall establish a more than de minimis penalty, at
26 the minimum amount necessary to satisfy the requirements of § 529 of Title 26
27 of the United States Code as in effect on January 1, 1999 for a nonqualified
28 withdrawal on the portion of the withdrawal that constitutes income under
29 § 529 of Title 26 of the United States Code as in effect on January 1, 1999.

30 (d) Penalties collected under this section may be used to defray the
31 costs of the Program.

32
33 SECTION 12. Liberal construction.

34 This act shall be liberally construed to comply with the requirement of
35 § 529 of Title 26 of the United States Code as in effect on January 1, 1999.

36

SECTION 13. Funds exempt from tax.

(a) Except as otherwise indicated in this Act, interest, dividends and capital gains from funds invested in the Program shall be exempt from Arkansas income taxes.

(b) Contributions to a tuition savings account established under this program may not be excluded or deducted from the contributor's income for the purpose of calculating Arkansas income tax.

(c) Qualified withdrawals from a tuition savings account established under this program will be exempt from Arkansas income tax with respect to the designated beneficiary's income. Nonqualified withdrawals from a tuition savings account established under this program will be subject to Arkansas income tax. The nonqualified withdrawal will be taxable to the party (account owner or designated beneficiary) who actually makes the withdrawal.

(d) If an account owner receives a refund of contributions to a tuition savings account established under this program because of either:

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

(2) a scholarship (or allowance or payment described in § 135

(d)(1)(B) or (C) of Title 26 of the United States Code as in effect on January 1, 1999) received by the designated beneficiary, any earnings on the contribution that are included in the refund will be subject to Arkansas income tax.

SECTION 14. Arkansas Code Title 6, Chapter 62, Subchapter 9 is repealed.

~~6-62-901. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Authority" means the Arkansas Tuition Trust Authority as created by this subchapter;~~

~~(2) "Beneficiary" means a resident of this state designated in a tuition payment contract as the individual entitled to apply:~~

~~(A) Tuition credits purchased under the contract to the payment of that individual's undergraduate tuition; and~~

~~(B) Supplemental tuition credits purchased under the contract to the payment of other educational costs that individual may incur;~~

~~(3) "Tuition credit" means a credit of the Arkansas Tuition Trust Authority purchased under this subchapter on behalf of a beneficiary;~~

1 ~~(4) "Institution of higher education" means a state institution of higher~~
2 ~~education, a proprietary institution of higher education, or an accredited~~
3 ~~college or university, regardless of where it is located, that is accredited~~
4 ~~by an accrediting organization or professional association recognized by the~~
5 ~~authority;~~

6 ~~(5) "Supplemental tuition credit" means any tuition credit purchased on~~
7 ~~behalf of a beneficiary in excess of four hundred (400) credits;~~

8 ~~(6) "Tuition" means the charges imposed to attend an institution of higher~~
9 ~~education as an undergraduate and all fees required as a condition of~~
10 ~~enrollment, as determined by the Arkansas Tuition Trust Authority. Tuition~~
11 ~~does not include fees charged to out-of-state residents by state institutions~~
12 ~~of higher education, laboratory fees, room and board, or other similar fees~~
13 ~~and charges;~~

14 ~~(7) "Weighted average tuition" means the tuition cost resulting from the~~
15 ~~following calculation:~~

16 ~~(A) Add the products of the annual undergraduate tuition at each state-~~
17 ~~supported four-year institution of higher education multiplied by that~~
18 ~~institution's total number of undergraduate fiscal-year-equated students; and~~

19 ~~(B) Divide the gross total of the product from subdivision (7)(A) of this~~
20 ~~section by the total number of undergraduate fiscal-year-equated students~~
21 ~~attending four-year state universities;~~

22 ~~(8) "State institution of higher education" includes the state-supported two-~~
23 ~~year or four-year institutions of higher education, community colleges, and~~
24 ~~technical colleges; and~~

25 ~~(9) "Principal amount" refers to the initial offering price to the public of~~
26 ~~an obligation, exclusive of the accrued interest, if any. "Principal amount"~~
27 ~~does not refer to the aggregate accredited amount payable at maturity or~~
28 ~~redemption of an obligation.~~

29
30 ~~6-62-902. Arkansas College Savings Program created.~~

31 ~~In order to help make higher education affordable and accessible to all~~
32 ~~citizens of Arkansas, to maintain state institutions of higher education by~~
33 ~~helping to provide a stable financial base to these institutions, to provide~~
34 ~~the citizens of Arkansas with financing assistance for higher education and~~
35 ~~protection against rising tuition costs, to encourage saving to enhance the~~
36 ~~ability of citizens of Arkansas to obtain financial access to institutions of~~

1 ~~higher education, to encourage elementary and secondary students in this state~~
2 ~~to achieve academic excellence, and to promote a well-educated and financially~~
3 ~~secure population to the ultimate benefit of all citizens of the State of~~
4 ~~Arkansas, there is hereby created the Arkansas College Savings Program. The~~
5 ~~program shall consist of the sale of tuition credits and supplemental tuition~~
6 ~~credits.~~

7
8 ~~6-62-903. Arkansas Tuition Trust Authority - Creation - Members.~~

9 ~~(a) There is hereby created the Arkansas Tuition Trust Authority, which~~
10 ~~shall have the powers enumerated in this subchapter. The exercise by the~~
11 ~~authority of its powers shall be and is hereby declared an essential state~~
12 ~~governmental function. The authority is subject to all provisions of law~~
13 ~~generally applicable to state agencies which do not conflict with the~~
14 ~~provisions of this subchapter.~~

15 ~~(b)(1) The Arkansas Tuition Trust Authority shall consist of thirteen (13)~~
16 ~~members.~~

17 ~~(A) Seven (7) members shall be appointed by the Governor with the advice and~~
18 ~~consent of the Senate as follows:~~

19 ~~(i) Two (2) shall represent state institutions of higher education;~~

20 ~~(ii) Two (2) shall represent private nonprofit colleges and universities~~
21 ~~located in Arkansas; and~~

22 ~~(iii) Three (3) shall have experience in the field of banking, investment~~
23 ~~banking, marketing, insurance, or law.~~

24 ~~(B) Three (3) members of the House of Representatives shall be appointed by~~
25 ~~the Speaker of the House of Representatives, and three (3) members of the~~
26 ~~Senate shall be appointed by the President Pro Tempore of the Senate.~~

27 ~~(C) The Director of the Department of Higher Education or the director's~~
28 ~~designee shall be an ex officio nonvoting member.~~

29 ~~(D) The Treasurer of State shall be an ex officio nonvoting member.~~

30 ~~(2) Terms of office for gubernatorial appointees shall be for four (4) years.~~

31 ~~(3) Members appointed by the Speaker of the House of Representatives and the~~
32 ~~President Pro Tempore of the Senate shall serve two-year terms, provided that~~
33 ~~legislative members may continue to serve on the authority only if they remain~~
34 ~~members of the General Assembly.~~

35 ~~(4) Any vacancy of the authority shall be filled in the same manner as the~~
36 ~~original appointment, except that any person appointed to fill a vacancy shall~~

1 ~~be appointed to the remainder of the unexpired term.~~

2 ~~(5) Any member is eligible for reappointment.~~

3 ~~(c)(1) Any member may be removed by the appointing authority for misfeasance,~~
4 ~~malfeasance, willful neglect of duty, or for other cause after notice and~~
5 ~~public hearing, unless the notice and hearing are waived in writing by the~~
6 ~~member.~~

7 ~~(2) Members shall serve without compensation but nonlegislator members may~~
8 ~~receive expense reimbursement in accordance with § 25-16-901 et seq. Members~~
9 ~~of the General Assembly serving on the authority shall be entitled to per diem~~
10 ~~and mileage allowances for attendance at meetings at the same rate authorized~~
11 ~~by law for legislators' attendance at meetings of interim committees of the~~
12 ~~General Assembly.~~

13 ~~(d) The Speaker of the House of Representatives and the President Pro Tempore~~
14 ~~of the Senate shall each designate a member of the authority to serve as co-~~
15 ~~chairmen.~~

16 ~~(e) The co-chairmen of the authority, the seven (7) gubernatorial appointees,~~
17 ~~and the Director of the Department of Higher Education or his designee shall~~
18 ~~serve as the executive committee of the authority and shall elect an executive~~
19 ~~chairman from among the executive committee members. The authority and the~~
20 ~~executive committee may elect such other officers as determined by the~~
21 ~~authority or the executive committee respectively.~~

22 ~~(f)(1) The authority shall meet at least annually at the call of either co-~~
23 ~~chairman and at such other times as either co-chairman or the authority~~
24 ~~determines necessary. In the absence of both co-chairmen, the executive~~
25 ~~chairman shall serve as the presiding officer of the authority.~~

26 ~~(2) The executive committee shall meet at the call of the executive chairman~~
27 ~~or as the executive committee determines necessary.~~

28 ~~(g) The authority may delegate to the executive committee such duties and~~
29 ~~responsibilities as the authority determines appropriate, except that the~~
30 ~~authority shall not delegate to the executive committee the final~~
31 ~~determination of the annual price of a tuition credit or the employment of an~~
32 ~~executive director of the authority. Upon such delegation, the executive~~
33 ~~committee shall have the authority to act pursuant to such delegation without~~
34 ~~further approval or action by the authority.~~

35 ~~(h)(1) A majority of the authority shall constitute a quorum of the~~
36 ~~authority, the affirmative vote of which shall be necessary for any action~~

1 ~~taken by the authority.~~

2 ~~(2) A majority of the executive committee shall constitute a quorum of the~~
3 ~~executive committee, the affirmative vote of which shall be necessary for any~~
4 ~~action taken by the executive committee.~~

5 ~~(3) No vacancy in the membership of the authority or the executive committee~~
6 ~~shall impair the rights of a quorum to exercise all rights and perform all~~
7 ~~duties of the authority or the executive committee respectively.~~

8

9 ~~6-62-904. Plan for sale - Price of tuition credit.~~

10 ~~(a) The Arkansas Tuition Trust Authority shall develop a plan for the sale of~~
11 ~~tuition credits and supplemental tuition credits. The Student Loan Authority~~
12 ~~and the State Board of Higher Education shall cooperate with the authority and~~
13 ~~provide technical assistance upon request.~~

14 ~~(b) On or before November 30, 1994, and each year thereafter, the authority~~
15 ~~shall determine the weighted average tuition of four-year state universities~~
16 ~~and colleges in the academic year that began on or after August 1 of the~~
17 ~~current calendar year and shall establish the price of a tuition credit~~
18 ~~purchased on behalf of a beneficiary in the ensuing calendar year. Such price~~
19 ~~shall be based on sound actuarial principles and shall, to the extent~~
20 ~~actuarially possible, reasonably approximate one percent (1%) of the weighted~~
21 ~~average tuition for that academic year plus the costs of administering the~~
22 ~~tuition credit program.~~

23

24 ~~— 6-62-905. Powers and duties.~~

25 ~~In addition to any other powers conferred by this subchapter, the Arkansas~~
26 ~~Tuition Trust Authority may do any of the following:~~

27 ~~(1) Impose reasonable residency requirements for beneficiaries of tuition~~
28 ~~credits;~~

29 ~~(2) Impose reasonable limits on the number of tuition credit participants;~~

30 ~~(3) Impose and collect administrative fees and charges in connection with any~~
31 ~~transaction under this subchapter;~~

32 ~~(4) Purchase insurance from insurers licensed to do business in this state~~
33 ~~providing for coverage against any loss in connection with the authority's~~
34 ~~property, assets, or activities or to further ensure the value of tuition~~
35 ~~credits;~~

36 ~~(5) Indemnify or purchase policies of insurance on behalf of members,~~

- 1 ~~officers, and employees of the authority from insurers licensed to do business~~
2 ~~in this state providing for coverage for any liability incurred in connection~~
3 ~~with any civil action, demand, or claim against a director, officer, or~~
4 ~~employee by reason of an act or omission by the director, officer, or employee~~
5 ~~that was not manifestly outside the scope of his employment or official duties~~
6 ~~or with malicious purpose, in bad faith, or in a wanton or reckless manner;~~
7 ~~(6) Make, execute, and deliver contracts, conveyances, and other instruments~~
8 ~~necessary to the exercise and discharge of the powers and duties of the~~
9 ~~authority;~~
10 ~~(7) Promote, advertise, and publicize the college savings program;~~
11 ~~(8) Adopt reasonable rules and regulations pursuant to the Arkansas~~
12 ~~Administrative Procedure Act, § 25-15-201 et seq., for the implementation of~~
13 ~~the college savings program;~~
14 ~~(9) Contract, for the provision of all or part of the services necessary for~~
15 ~~the management and operation of the college savings program, with a bank,~~
16 ~~trust company, savings and loan association, insurance company, or licensed~~
17 ~~dealer in securities if the bank, company, association, or dealer is~~
18 ~~authorized to do business in this state;~~
19 ~~(10) Contract for other services, or for goods, needed by the authority in~~
20 ~~the conduct of its business, including but not limited to, credit card~~
21 ~~services;~~
22 ~~(11) Employ an executive director and other personnel as necessary to carry~~
23 ~~out its responsibilities under this subchapter and fix the compensation of~~
24 ~~these persons. All employees of the authority shall be in the unclassified~~
25 ~~civil service and shall be eligible for membership in the Arkansas Public~~
26 ~~Employees' Retirement System;~~
27 ~~(12) Contract with financial consultants, actuaries, auditors, and other~~
28 ~~consultants as necessary to carry out its responsibilities under this~~
29 ~~subchapter;~~
30 ~~(13) Enter into agreements with any agency of the state or its political~~
31 ~~subdivisions or with private employers under which an employee may agree to~~
32 ~~have a designated amount deducted in each payroll period from the wages or~~
33 ~~salary due him for the purpose of purchasing tuition credits and supplemental~~
34 ~~tuition credits pursuant to a tuition payment contract;~~
35 ~~(14) Enter into an agreement with the Treasurer of State under which the~~
36 ~~Treasurer of State will receive, and credit to the Arkansas Tuition Trust~~

1 ~~Fund, from any bank or savings and loan association authorized to do business~~
2 ~~in this state, amounts that a depositor of the bank or association authorizes~~
3 ~~the bank or association to withdraw periodically from his account for the~~
4 ~~purpose of purchasing tuition credits or supplemental tuition credits pursuant~~
5 ~~to a tuition payment contract;~~

6 ~~(15) Solicit and accept gifts, grants, and loans from any person or~~
7 ~~governmental agency and participate in any governmental program;~~

8 ~~(16) Impose limits on the number of credits which may be purchased on behalf~~
9 ~~of any beneficiary, so long as such limits do not exceed the limits set forth~~
10 ~~in § 6-62-906;~~

11 ~~(17) Impose restrictions on the substitution of another individual for the~~
12 ~~original beneficiary; and~~

13 ~~(18) Perform all acts necessary and proper to carry out the duties and~~
14 ~~responsibilities of the authority pursuant to this subchapter.~~

15
16 ~~— 6-62-906. Tuition payment contracts.~~

17 ~~(a) The Arkansas Tuition Trust Authority may enter into a tuition payment~~
18 ~~contract with any person for the purchase of tuition credits on behalf of a~~
19 ~~beneficiary. A tuition payment contract shall allow any person to purchase~~
20 ~~tuition credits on behalf of a beneficiary at the price determined by the~~
21 ~~authority pursuant to § 6-62-904 or § 6-62-909 for the year in which the~~
22 ~~tuition credit is purchased.~~

23 ~~(1)(A) Each tuition credit purchased on behalf of a beneficiary, up to a~~
24 ~~maximum of four hundred (400) tuition credits, shall entitle the beneficiary~~
25 ~~to an amount equal to one percent (1%) of the tuition charged for a full-time~~
26 ~~student during an academic year by the state institution of higher education~~
27 ~~in which the beneficiary is enrolled as an undergraduate student, or one~~
28 ~~percent (1%) of the weighted average tuition if the student is enrolled as an~~
29 ~~undergraduate student in an institution of higher education other than a state~~
30 ~~institution of higher education.~~

31 ~~(B) Tuition credits purchased on behalf of a beneficiary in excess of four~~
32 ~~hundred (400) shall automatically be designated as supplemental tuition~~
33 ~~credits pursuant to subsection (b) of this section.~~

34 ~~(2)(A) Nothing in this subchapter, or in any tuition payment contract entered~~
35 ~~into pursuant to this subchapter, shall be construed as a guarantee by the~~
36 ~~state, the authority, or any institution of higher education that a~~

~~1 beneficiary of a tuition payment contract will be admitted to an institution
2 of higher education, or, upon admission to an institution of higher education,
3 will be permitted to continue to attend or will receive a degree from an
4 institution of higher education.~~

~~5 (B) Nothing in this subchapter or in any tuition payment contract entered
6 into pursuant to this subchapter shall be considered a guarantee that the
7 beneficiary's cost of tuition at an institution of higher education will be
8 covered in full by the proceeds of the beneficiary's tuition credits.~~

~~9 (b)(1) Tuition credits in excess of four hundred (400) purchased on behalf of
10 a beneficiary shall be designated as supplemental tuition credits.~~

~~11 (2) Each supplemental tuition credit purchased on behalf of a beneficiary
12 shall entitle the beneficiary to a payment equal to the amount paid for the
13 supplemental tuition credit, plus the investment earnings on the credit, minus
14 the administrative costs of the program as determined by the authority.~~

~~15 (3) Supplemental tuition credits may be used by the beneficiary for the
16 payment of charges for college textbooks, laboratory, other educational fees
17 not included in tuition or not otherwise covered by tuition credits, and other
18 similar educational expenses as defined by the authority.~~

~~19 (4) Not more than four hundred (400) supplemental tuition credits may be
20 purchased on behalf of any beneficiary.~~

~~21 (c) The following information shall be disclosed in writing to each purchaser
22 of tuition credits and supplemental tuition credits:~~

~~23 (1) The terms and conditions for purchasing tuition credits and supplemental
24 tuition credits;~~

~~25 (2) Any restrictions on the substitution of another individual for the
26 original beneficiary;~~

~~27 (3) The person entitled to terminate the contract;~~

~~28 (4) The terms and conditions under which the contract may be terminated and
29 the amount of the refund, if any, to which the person terminating the contract
30 or that person's designee, is entitled upon termination;~~

~~31 (5) The obligation of the authority to make payments to a beneficiary, or an
32 institution of higher education on behalf of a beneficiary, under subsection
33 (a) of this section based upon the number of tuition credits purchased on
34 behalf of the beneficiary;~~

~~35 (6) The method by which tuition credits shall be applied toward payment of
36 tuition if, in any academic term, the beneficiary is a part-time student;~~

1 ~~(7) The obligation of the authority to make payments to the beneficiary, or~~
2 ~~to an institution of higher education on behalf of a beneficiary, under~~
3 ~~subsection (b) of this section based upon the number of supplemental tuition~~
4 ~~credits purchased on behalf of the beneficiary;~~

5 ~~(8) The period of time during which the beneficiary may receive benefits~~
6 ~~under the contract;~~

7 ~~(9) The terms and conditions under which money may be wholly or partially~~
8 ~~withdrawn from the program, including, but not limited to, any reasonable~~
9 ~~charges and fees that may be imposed for withdrawal;~~

10 ~~(10) All other rights and obligations of the purchaser and the authority,~~
11 ~~including the provisions of § 6-62-907(a), and any other terms, conditions,~~
12 ~~and provisions the authority considers necessary and appropriate.~~

13 ~~(d) A tuition payment contract may provide that the authority will pay~~
14 ~~directly to the institution of higher education in which the beneficiary is~~
15 ~~enrolled during a term the amount represented by the tuition credits being~~
16 ~~used that term.~~

17 ~~(e) A tuition payment contract may provide that if the contract has not been~~
18 ~~terminated or the beneficiary designated in the contract has not used credits~~
19 ~~purchased under the contract within a specified period of time, the authority~~
20 ~~may, after making a reasonable effort to locate the purchaser of the tuition~~
21 ~~credits and supplemental tuition credits, the beneficiary, and any person~~
22 ~~designated in the contract to act on behalf of the purchaser of the credits or~~
23 ~~the beneficiary, terminate the contract and retain the amounts payable under~~
24 ~~the contract.~~

25 ~~(f) If, at any time after tuition credits and supplemental tuition credits~~
26 ~~are purchased on behalf of a beneficiary, the beneficiary becomes a~~
27 ~~nonresident of this state, credits purchased while the beneficiary was a~~
28 ~~resident may be applied by the beneficiary toward the payment of tuition at an~~
29 ~~institution of higher education and other educational expenses in the manner~~
30 ~~specified in subsections (a) and (b) of this section, except that, if the~~
31 ~~beneficiary enrolls in a state institution of higher education, the~~
32 ~~beneficiary shall be responsible for payment of all nonresident fees charged~~
33 ~~to out-of-state residents by the institution at which the beneficiary is~~
34 ~~enrolled.~~

35
36 ~~6-62-907. Termination of contract.~~

1 ~~(a) Unless otherwise provided for in the contract, a tuition payment~~
2 ~~contract may be terminated by the person entering into the contract, the~~
3 ~~beneficiary, or by any person or combination of persons designated in the~~
4 ~~contract.~~

5 ~~(b) A tuition payment contract may be terminated under any of the following~~
6 ~~circumstances:~~

7 ~~(1) Upon the death of the beneficiary;~~

8 ~~(2) Upon notification to the Arkansas Tuition Trust Authority in writing that~~
9 ~~the beneficiary has decided not to attend an institution of higher education~~
10 ~~and requests that the tuition payment contract be terminated;~~

11 ~~(3) Upon completion of the degree requirements at a state institution of~~
12 ~~higher education;~~

13 ~~(4) Upon completion of the bachelor's degree requirements at an institution~~
14 ~~of higher education in fewer than twelve (12) quarters, eight (8) semesters,~~
15 ~~or their equivalent;~~

16 ~~(5) Upon the occurrence of other circumstances determined by the authority to~~
17 ~~be grounds for termination.~~

18 ~~(c) The authority shall determine the method and schedule for payment of~~
19 ~~refunds upon termination of a tuition payment contract. The amount of the~~
20 ~~refund to which the person designated in the contract is entitled shall be~~
21 ~~equal to the lesser of the following:~~

22 ~~(1) One percent (1%) of the lowest tuition charged by a four-year state~~
23 ~~university or college in the academic year the contract is terminated,~~
24 ~~multiplied by the number of tuition credits and supplemental tuition credits~~
25 ~~purchased and not used, minus any reasonable charges and fees provided for by~~
26 ~~the authority; or~~

27 ~~(2) The total purchase price of all tuition credits and supplemental tuition~~
28 ~~credits purchased pursuant to the contract, reduced by a percentage of that~~
29 ~~total price that is equal to the percentage of the total number of tuition~~
30 ~~credits and supplemental tuition credits purchased and used as of the date the~~
31 ~~contract is terminated, plus a share of the investment earnings on the credits~~
32 ~~proportionate to the percentage of unused credits, minus a pro rata share of~~
33 ~~the costs of administering the program as determined by the authority, and~~
34 ~~minus any reasonable charges and fees provided for by the authority.~~

35 ~~(d) If the beneficiary is the recipient of a scholarship, waiver of tuition,~~
36 ~~or similar subvention that the authority determines cannot be converted into~~

1 ~~money by the beneficiary, the authority shall, during each academic term that~~
2 ~~the beneficiary furnishes the authority such information about the~~
3 ~~scholarship, waiver, or similar subvention as the authority requires, refund~~
4 ~~to the person designated in the contract an amount equal to the value that the~~
5 ~~tuition credits that are not needed on account of the scholarship, waiver, or~~
6 ~~similar subvention would otherwise have to him that term at the institution of~~
7 ~~higher education where he is enrolled. The authority may, at its sole option,~~
8 ~~designate the institution of higher education at which the beneficiary is~~
9 ~~enrolled as the agent of the authority for purposes of refunds pursuant to~~
10 ~~this subsection.~~

11 ~~(e) If, in any academic term for which tuition credits have been used to pay~~
12 ~~all or part of a beneficiary's tuition, the beneficiary withdraws from the~~
13 ~~institution of higher education at which the beneficiary is enrolled prior to~~
14 ~~the end of the academic term, a pro rata share of any refund of tuition as a~~
15 ~~result of the withdrawal equal to that portion of the tuition paid with~~
16 ~~tuition credits shall be made to the authority, unless the authority~~
17 ~~designates a different procedure. The authority shall credit any refund~~
18 ~~received, less any reasonable charges and fees provided for by the authority,~~
19 ~~to the appropriate tuition payment contract account.~~

20
21 ~~— 6-62-908. Arkansas Tuition Trust Fund.~~

22 ~~(a)(1) The assets of the Arkansas Tuition Trust Authority reserved for~~
23 ~~payment of the obligations of the authority pursuant to tuition payment~~
24 ~~contracts shall be placed in a fund, which is hereby created, and shall be~~
25 ~~known as the Arkansas Tuition Trust Fund.~~

26 ~~(2) The fund shall be in the custody of the Treasurer of State but shall not~~
27 ~~be part of the State Treasury.~~

28 ~~(3) That portion of payments received by the authority or the Treasurer of~~
29 ~~State from persons purchasing tuition credits and supplemental tuition credits~~
30 ~~under tuition payment contracts which the authority determines is actuarially~~
31 ~~necessary for the payment of obligations of the authority pursuant to tuition~~
32 ~~payment contracts, all interest and investment income earned by the fund, and~~
33 ~~all other receipts of the authority from any other source which the authority~~
34 ~~determines appropriate shall be deposited in the fund.~~

35 ~~(4) Any claim for payment pursuant to a tuition payment contract shall be~~
36 ~~solely against the assets of the fund. No purchaser or beneficiary of tuition~~

1 ~~credits or supplemental tuition credits shall have any claim against the~~
2 ~~general revenues or other funds of the authority or the state or against the~~
3 ~~funds of any state institution of higher education.~~

4 ~~(5) All investment fees and other costs incurred in connection with the~~
5 ~~exercise of the investment powers of the authority pursuant to subsections~~
6 ~~(d), (e), and (f) of this section shall be paid from the assets of the fund.~~

7 ~~(b) Unless otherwise provided by the authority, the assets of the Arkansas~~
8 ~~Tuition Trust Fund shall be expended in the following order:~~

9 ~~(1) To make payments to beneficiaries, or institutions of higher education on~~
10 ~~behalf of beneficiaries, under § 6-62-906(a)(1);~~

11 ~~(2) To make payments to beneficiaries under § 6-62-906(b);~~

12 ~~(3) To make refunds as provided in § 6-62-907(c) and (d);~~

13 ~~(4) To pay the investment fees and other costs of administering the fund.~~

14 ~~(c)(1) All disbursements from the Arkansas Tuition Trust Fund shall be made~~
15 ~~by the Treasurer of State on order of a designee of the authority.~~

16 ~~(2) The Treasurer of State shall deposit any portion of the Arkansas Tuition~~
17 ~~Trust Fund not needed for immediate use in the same manner as state funds are~~
18 ~~deposited.~~

19 ~~(d) The authority is the trustee of the Arkansas Tuition Trust Fund. Assets~~
20 ~~of the fund shall be administered by the authority in a manner designed to be~~
21 ~~actuarially sound so that the assets of the fund will be sufficient to satisfy~~
22 ~~the obligations of the authority pursuant to tuition payment contracts and~~
23 ~~defray the reasonable expenses of administering the fund.~~

24 ~~(e) The authority may invest the assets of the fund in:~~

25 ~~(1) Direct obligations or obligations whose principal and interest are~~
26 ~~guaranteed by the United States;~~

27 ~~(2) Direct obligations of or participation certificates guaranteed by the~~
28 ~~Federal Financing Bank, the Federal Intermediate Credit Bank, the Federal Land~~
29 ~~Banks, the Federal Home Loan Bank, the Government National Mortgage~~
30 ~~Association, or banks for cooperatives;~~

31 ~~(3) Certificates of deposit of any bank, savings and loan association, or~~
32 ~~trust company whose deposits are fully secured by a pledge of securities of~~
33 ~~any kind specified in subdivision (e)(1) or (2) of this section;~~

34 ~~(4) Certificates of deposit of any bank, savings and loan association, or~~
35 ~~trust company, which deposit is fully insured by the Federal Deposit Insurance~~
36 ~~Corporation;~~

1 ~~(5) Repurchase agreements sold by any bank, savings and loan association, or~~
2 ~~trust company, provided the repurchase agreement is fully secured by a pledge~~
3 ~~of securities of any kind specified in subdivision (e)(1) or (2) of this~~
4 ~~section;~~

5 ~~(6) General obligations of the state or its political subdivisions; and~~

6 ~~(7) Obligations, including investment agreements, of any bank, savings and~~
7 ~~loan association, trust company, or other financial institution, or a holding~~
8 ~~company thereof, whose credit is rated in either of the top two (2) rating~~
9 ~~categories by a nationally recognized credit rating service or corporation.~~

10 ~~(f) The State Board of Finance shall, with the approval of the authority,~~
11 ~~exercise the investment powers of the authority as set forth in subsection (e)~~
12 ~~of this section until the authority determines that assumption and exercise by~~
13 ~~the authority of such investment powers is financially and administratively~~
14 ~~feasible. Such investment powers shall be exercised by the State Board of~~
15 ~~Finance in a manner agreed upon by the authority which maximizes the return on~~
16 ~~investment and minimizes the administrative expenses.~~

17 ~~(g)(1) The authority shall maintain an individual account for each tuition~~
18 ~~payment contract, showing the beneficiary of that contract and the number of~~
19 ~~tuition credits and supplemental tuition credits purchased pursuant to that~~
20 ~~contract.~~

21 ~~(2) Upon request of any beneficiary or person who has entered into a tuition~~
22 ~~payment contract, the authority shall provide a statement indicating, in the~~
23 ~~case of a beneficiary, the number of tuition credits and supplemental tuition~~
24 ~~credits purchased on behalf of the beneficiary, or in the case of a person who~~
25 ~~has entered into a tuition payment contract, the number of tuition credits and~~
26 ~~supplemental tuition credits purchased, used, or refunded pursuant to that~~
27 ~~contract.~~

28 ~~(3) A beneficiary and person that have entered into a tuition payment~~
29 ~~contract each may file only one (1) request under this subsection in any year.~~

30 ~~(h)(1) In January of each year, the authority shall report to each person who~~
31 ~~received any payments or refunds from the authority during the preceding year~~
32 ~~information relative to the value of such payments or refunds to assist in~~
33 ~~determining that person's tax liability.~~

34 ~~(2) The authority shall report to the Director of the Department of Finance~~
35 ~~and Administration such information, and at such times, as the director~~
36 ~~requires to determine any tax liability that a person may have incurred during~~

1 ~~the preceding year as a result of having received any payments or refunds from~~
2 ~~the authority.~~

3 ~~(i) All records of the authority indicating the identity of purchasers and~~
4 ~~beneficiaries of tuition credits and supplemental tuition credits, and the~~
5 ~~number of tuition credits and supplemental tuition credits purchased, used, or~~
6 ~~refunded under a tuition payment contract, are not public records within the~~
7 ~~meaning of the Freedom of Information Act of~~

8
9 ~~— 6-62-909. Arkansas Tuition Trust Operating Fund — Arkansas Tuition Trust~~
10 ~~Reserve Fund.~~

11 ~~(a)(1) There is hereby established an operating fund which shall be a part of~~
12 ~~the State Treasury and shall be known as the Arkansas Tuition Trust Operating~~
13 ~~Fund.~~

14 ~~(2) Any interest or investment income earned on the assets of the operating~~
15 ~~fund shall be deposited in the operating fund.~~

16 ~~(3) Except as otherwise provided for in this subchapter, all operating~~
17 ~~expenses of the authority and costs of administering the program shall be paid~~
18 ~~from the operating fund.~~

19 ~~(b)(1) In addition to the Arkansas Tuition Trust Fund, there is hereby~~
20 ~~established a reserve fund which shall be in the custody of the Treasurer of~~
21 ~~State but shall not be part of the State Treasury and shall be known as the~~
22 ~~Arkansas Tuition Trust Reserve Fund.~~

23 ~~(2) That portion of payments received by the authority or the Treasurer of~~
24 ~~State from persons purchasing tuition credits or supplemental tuition credits~~
25 ~~under tuition payment contracts which the authority determines is not~~
26 ~~actuarially necessary for the payment of obligations of the authority pursuant~~
27 ~~to tuition payment contracts, any interest and investment income earned by the~~
28 ~~reserve fund, any administrative charges and fees imposed by the authority on~~
29 ~~transactions under this subchapter or on purchasers or beneficiaries of~~
30 ~~tuition credits, and all other receipts from any other source which the~~
31 ~~authority determines appropriate shall be deposited in the reserve fund to pay~~
32 ~~the operating expenses of the authority and the costs of administering the~~
33 ~~program. (3) All investment fees and other costs incurred in connection with~~
34 ~~the exercise of such investment powers shall be paid from the assets of the~~
35 ~~reserve fund.~~

36 ~~(4) The assets of the reserve fund may be invested in the same manner and~~

1 ~~subject to the same limitations set forth in subsections (d), (e), and (f) of~~
2 ~~§ 6-62-908.~~

3 ~~(c) The Treasurer of State shall, upon request of the authority, transfer~~
4 ~~funds from the reserve fund to the operating fund as the authority determines~~
5 ~~appropriate to pay those current operating expenses of the authority and costs~~
6 ~~of administering the program as the authority designates.~~

7
8 ~~— 6-62-910. Administration of trust fund.~~

9 ~~Notwithstanding anything to the contrary in § 6-62-904 and § 6-62-906:~~

10 ~~(1) Annually, the Arkansas Tuition Trust Authority shall have the actuarial~~
11 ~~soundness of the Arkansas Tuition Trust Fund evaluated by a nationally~~
12 ~~recognized actuary and shall determine whether additional assets are necessary~~
13 ~~to defray the obligations of the authority. If the assets of the fund are~~
14 ~~insufficient to ensure the actuarial soundness of the fund, the authority~~
15 ~~shall adjust the price of subsequent purchases of tuition credits and~~
16 ~~supplemental tuition credits;~~

17 ~~(2) The authority may, in its sole discretion, provide for a greater benefit~~
18 ~~than that described in § 6-62-906 for beneficiaries enrolled in any specific~~
19 ~~state institution of higher education or group of state institutions of higher~~
20 ~~education if such determination is based on sound actuarial principles and~~
21 ~~will not jeopardize the actuarial soundness of the Arkansas Tuition Trust Fund~~
22 ~~or the ability of the authority to otherwise meet its obligations;~~

23 ~~(3)(A) The authority shall prepare and cause to have audited an annual~~
24 ~~financial report on all financial activity of the Arkansas Tuition Trust~~
25 ~~Authority within ninety (90) days of the end of the fiscal year.~~

26 ~~(B)(i) The authority shall transmit a copy of the financial report to the~~
27 ~~Governor, the President Pro Tempore of the Senate, and the Speaker of the~~
28 ~~House of Representatives.~~

29 ~~(ii) Copies of the audited financial report also shall be made available,~~
30 ~~upon request, to the persons entering into contracts with the authority and to~~
31 ~~prospective purchasers of tuition credits and supplemental tuition credits;~~

32 ~~(4) Upon termination of the program or liquidation of the Arkansas Tuition~~
33 ~~Trust Fund, the Arkansas Tuition Trust Reserve Fund, and the Arkansas Tuition~~
34 ~~Trust Operating Fund, any remaining assets of the funds after all obligations~~
35 ~~of the funds have been satisfied pursuant to § 6-62-908(b) and § 6-62-909~~
36 ~~shall be transferred to the general revenue fund of the state.~~

1 ~~6-62-911. Approval of plan required.~~

2 ~~The Arkansas Tuition Trust Authority shall not begin selling tuition credits~~
3 ~~until the authority's plan for selling the tuition credits is approved by the~~
4 ~~State Board of Higher Education and the Arkansas Development Finance~~
5 ~~Authority.~~

6
7 SECTION 15. Arkansas Code Title 16, Chapter 83, Subchapter 1 is
8 repealed.

9 ~~6-83-101. Title.~~

10 ~~This chapter shall be known and may be cited as the "Arkansas Tax-Deferred~~
11 ~~Tuition Savings Program Act of 1997."~~

12
13 ~~6-83-102. Definitions.~~

14 ~~(a) "Designated beneficiary" means the individual designated at the~~
15 ~~commencement of participation in this program as the beneficiary of amounts~~
16 ~~paid (or to be paid) to the program; in the case of a change in beneficiaries,~~
17 ~~the individual who is the new beneficiary; and in the case of an interest in~~
18 ~~this program purchased by a state or local government or an organization~~
19 ~~described in 26 U.S.C. § 501(c)(3) as in effect January 1, 1997, and exempt~~
20 ~~from taxation under 26 U.S.C. § 501(a) as in effect on January 1, 1997, as~~
21 ~~part of a scholarship program operated by such government or organization, the~~
22 ~~individual receiving such interest as a scholarship.~~

23 ~~(b) "Member of family" has the same meaning given such term in 26 U.S.C. §~~
24 ~~529 as in effect on January 1, 1997.~~

25 ~~(c) "Qualified higher education expenses" means tuition, fees, books,~~
26 ~~supplies, and equipment required for the enrollment or attendance of a~~
27 ~~designated beneficiary at an eligible educational institution, as defined in~~
28 ~~26 U.S.C. § 529, as in effect on January 1, 1997 including, but not limited~~
29 ~~to, post-graduate work or degrees.~~

30
31 ~~6-83-103. Creation.~~

32 ~~There is hereby created and established a qualified state tuition program~~
33 ~~known as the Arkansas Tax-Deferred Tuition Savings Program, as defined in~~
34 ~~Internal Revenue Code (26 U.S.C. §§ 1, et seq.) § 529, as in effect on January~~
35 ~~1, 1997, to be administered by the Arkansas Teachers' Retirement System. It is~~
36 ~~the intent of the legislature that those residents of this state desiring to~~

1 ~~provide a means for their family members for attending postsecondary~~
2 ~~institutions of higher education within or without the State of Arkansas have~~
3 ~~the greatest degree possible of tax deferral for cash contributions and~~
4 ~~distributions as permitted under the Internal Revenue Code.~~

5
6 ~~— 6-83-104. Contribution amount.~~

7 ~~Any individual residing in this state may make cash contributions to an~~
8 ~~account established under this chapter for the purpose of meeting the~~
9 ~~qualified higher education expenses of the designated beneficiary of the~~
10 ~~account. Contributions causing the balance of the account to immediately~~
11 ~~exceed the remaining qualified higher education expenses of the designated~~
12 ~~beneficiary shall be subject to a penalty equal to five percent (5%) of such~~
13 ~~excess contributions, payable to the general fund of the state.~~

14
15 ~~— 6-83-105. Administration - Arkansas Teachers' Retirement System.~~

16 ~~All funds contributed pursuant to this chapter shall be held, invested and~~
17 ~~accounted for by the Arkansas Teachers' Retirement System. The funds shall be~~
18 ~~segregated from the other funds of the Arkansas Teachers' Retirement System,~~
19 ~~but shall be invested in the same manner as it invests funds for members of~~
20 ~~the system. The Arkansas Teachers' Retirement System shall maintain a separate~~
21 ~~account for each designated beneficiary and shall account separately at least~~
22 ~~annually by January 31, calculated as of the end of the calendar year, to each~~
23 ~~contributor for all contributions, earnings, distributions or other~~
24 ~~transactions affecting each account of the contributor. No interest of any~~
25 ~~person in any account or portion thereof may be pledged as security for a~~
26 ~~loan.~~

27
28 ~~6-83-106. Distributions.~~

29 ~~The contributor to the account may designate distributions to be made to the~~
30 ~~designated beneficiary or to the contributor at such times and in such amounts~~
31 ~~as the contributor may elect. If and in the event the contributor dies while a~~
32 ~~balance remains in the account of the designated beneficiary, the designated~~
33 ~~beneficiary may designate distributions to himself or herself in such amounts~~
34 ~~and at such times as he or she may elect.~~

35
36 ~~— 6-83-107. Deduction from gross income - Change in beneficiary.~~

1 ~~(a) Except as otherwise provided in this subsection, no amount shall be~~
2 ~~included in gross income of a designated beneficiary under this program or a~~
3 ~~contributor to such program on behalf of a designated beneficiary with respect~~
4 ~~to any contribution, distribution or earnings under the program. Any~~
5 ~~distribution under the program shall be included in the gross income of the~~
6 ~~distributee in the manner substantially similar to that provided by federal~~
7 ~~law, to the extent it is not excluded from gross income under any other~~
8 ~~provision of law. The provisions of the preceding sentence shall not apply to~~
9 ~~that portion of any distribution which, within sixty (60) days of such~~
10 ~~distribution, is transferred to the credit of another designated beneficiary~~
11 ~~under this program who is a member of the family of the designated beneficiary~~
12 ~~with respect to which the contributions were made.~~

13 ~~(b) Any change in the designated beneficiary under this program shall not be~~
14 ~~treated as a distribution if the new designated beneficiary is a member of the~~
15 ~~family of the old designated beneficiary. If and to the extent a contributor~~
16 ~~receives a refund of earnings from an account that is not used for the~~
17 ~~qualified higher education expenses of the designated beneficiary, and is not~~
18 ~~refunded due to the death or disability of the designated beneficiary, or is~~
19 ~~not made on account of a scholarship or an allowance or payment described in §~~
20 ~~135(d)(1)(B) or (C) of the Internal Revenue Code as in effect January 1, 1997,~~
21 ~~to the extent the amount of such refund does not exceed the amount of the said~~
22 ~~scholarship, allowance or payment, said refunded earnings shall be subject to~~
23 ~~a penalty equal to ten percent (10%) of such refunded earnings.~~

24
25 ~~6-83-108. Interest in program not treated as debt.~~

26 ~~An interest in a qualified state tuition program shall not be treated as debt~~
27 ~~for purposes of 26 U.S.C. § 514.~~

28
29 ~~6-83-109. Administration - Standard of care.~~

30 ~~The Arkansas Teacher Retirement System, in administering the program created~~
31 ~~by this chapter, and in investing funds contributed pursuant to this chapter,~~
32 ~~shall use that standard of care described in the prudent investor rule~~
33 ~~presently codified as § 24-3-411. Any person having an interest in any account~~
34 ~~and who is damaged by reason of the provable failure of the Arkansas Teacher~~
35 ~~Retirement System to comply with the prudent investor rule may file a claim~~
36 ~~with the Arkansas Claims Commission as provided by law.~~

1
2 ~~6-83-110. Administration -- Compensation.~~

3 ~~As compensation for services performed by the Arkansas Teacher Retirement~~
4 ~~System in carrying out its duties under this chapter, said system shall be~~
5 ~~entitled to collect an annual fee equal to one percent (1%) of the principal~~
6 ~~portion of each account being administered (prorated, if need be, by reason of~~
7 ~~administering a particular account for only a portion of a year). Said fee may~~
8 ~~be taken from each such account by the system and transferred to its general~~
9 ~~funds or to such other of the system's own accounts as the system may elect~~
10 ~~and shall be reported on the annual accounting for each account required by §~~
11 ~~6-83-105. Similarly, the system may reimburse itself for any out-of-pocket~~
12 ~~expenses incurred by it in the administration of any individual account, such~~
13 ~~expense reimbursement to be taken directly from the appropriate account and~~
14 ~~accounted for as in the case of the fee mentioned in the preceding sentence.~~

15
16 SECTION 16. All provisions of this act of a general and permanent
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
18 Code Revision Commission shall incorporate the same in the Code.

19
20 SECTION 17. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

25
26 SECTION 18. All laws and parts of laws in conflict with this act are
27 hereby repealed.

28 */s/ Brown, et al*