

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

As Engrossed: H4/4/03  
**A Bill**

HOUSE BILL 2449

5 By: Representative Bright  
6  
7

### 8 For An Act To Be Entitled

9 AN ACT TO CREATE THE "ARKANSAS POST-SECONDARY  
10 PREPAID TUITION PROGRAM"; AND FOR OTHER PURPOSES.  
11

### 12 Subtitle

13 AN ACT TO CREATE THE ARKANSAS POST-  
14 SECONDARY PREPAID TUITION PROGRAM.  
15  
16

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

19 SECTION 1. For purposes of this act:

20 (1) "Academic year" means the time period specified by each  
21 participating institution;

22 (2) "Board" means the board of directors of the Arkansas Prepaid  
23 Affordable College Tuition Trust Fund;

24 (3) "Fund" means the prepaid tuition payment fund created in section 2  
25 of this act and known as the "Arkansas Prepaid Affordable College Tuition  
26 Trust Fund";

27 (4) "Office" means division of the office of the Treasurer of State  
28 that is responsible for administering the prepaid tuition accounts;

29 (5) "Participating institution" means any Arkansas public four-year  
30 institution or two-year community college or technical college that grants a  
31 postsecondary education credential, all of which are required to participate,  
32 and any Arkansas private college or university that is accredited by a  
33 national or regional accrediting agency, recognized by the United States  
34 Department of Education, that voluntarily requests to participate and is  
35 accepted for participation in the program by the board of directors created  
36 in section 3 of this act;



1       (6) "Prepaid tuition" means the amount of tuition estimated by the  
2 board for the standard tuition plans and for each participating institution  
3 for the academic year specified in the prepaid tuition contract;

4       (7) "Prepaid tuition academic year conversion" means the difference  
5 between the amount of prepaid tuition required in the original prepaid  
6 tuition contract and the amount of prepaid tuition required in an amended  
7 prepaid tuition contract as the result of the change in the academic year;

8       (8) "Prepaid tuition academic year conversion shortfall" means the  
9 amount by which the prepaid tuition required in an amended prepaid tuition  
10 contract as the result of the change in the academic year exceeds the amount  
11 of prepaid tuition required in the original prepaid tuition contract;

12       (9) "Prepaid tuition account" means the account for a qualified  
13 beneficiary as specified in the prepaid tuition contract;

14       (10) "Prepaid tuition contract" means the contract entered into by the  
15 board and the purchaser for the purchase of prepaid tuition for a qualified  
16 beneficiary to attend any participating institution as provided in sections 1  
17 through 7 of this act;

18       (11) "Prepaid tuition conversion" means the difference between the  
19 prepaid tuition of a standard plan and the prepaid tuition at a participating  
20 institution or the difference between the prepaid tuition at one (1)  
21 participating institution and the prepaid tuition at another participating  
22 institution;

23       (12) "Prepaid tuition conversion shortfall" means the amount by which  
24 the prepaid tuition at a participating institution exceeds the amount of the  
25 prepaid tuition of a standard plan or the amount by which the prepaid tuition  
26 at a participating institution exceeds the amount of the prepaid tuition at  
27 another participating institution;

28       (13) "Purchaser" means a person, corporation, association,  
29 partnership, or other legal entity who enters into a prepaid tuition  
30 contract;

31       (14) "Qualified beneficiary" means any resident of Arkansas at the  
32 time a purchaser enters into a prepaid tuition contract on behalf of the  
33 resident or any nonresident who intends to attend a participating institution  
34 in Arkansas;

35       (15) "Standard tuition plan" means the average of the estimated  
36 tuition for:

1 (A) Arkansas' community colleges;

2 (B) Technical colleges;

3 (C) Four-year universities; or

4 (D) Private colleges or universities;

5 (16) "Tuition" means the actual charges and all mandatory fees  
6 required as a condition of full-time enrollment in an undergraduate program  
7 for an academic year for a qualified beneficiary to attend a participating  
8 institution. Tuition for a private college or university is calculated on  
9 the current year tuition rate, increased by the same percentage that the  
10 University of Arkansas tuition is increased on a per year basis;

11 (17) "Tuition credit" means the discounted net present value of a unit  
12 equal to one twenty-fourth (1/24) of the prepaid tuition; and

13 (18) "Tuition shortfall" means the amount by which tuition exceeds the  
14 prepaid tuition adjusted in proportion to the number of tuition credits  
15 purchased.

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17 SECTION 2. (a)(1) There is hereby created an instrumentality of the  
18 state to be known as the "Arkansas Prepaid Affordable College Tuition Trust  
19 Fund".

20 (2) The fund shall be governed by a board of directors and  
21 administered by the Treasurer of State.

22 (3) The fund shall consist of payments received from prepaid  
23 tuition contracts under sections 1 through 7 of this act.

24 (4) Income earned from the investment of the fund shall remain  
25 in the fund and be credited to it.

26 (5) The fund shall not constitute an investment company.

27 (b) The purposes of the fund are:

28 (1) To provide affordable access to participating institutions  
29 for the qualified beneficiaries; and

30 (2) To provide students and their parents economic protection  
31 against rising tuition costs;

32 (c)(1) The office and the facilities of the Treasurer of State shall  
33 be used and employed in the administration of the fund including, but not  
34 limited to:

35 (A) The keeping of records;

36 (B) The employment of staff to assist in the

1 administration of the fund;

2 (C) The management of accounts and other investments;

3 (D) The transfer of funds; and

4 (E) The safekeeping of securities evidencing investments.

5 (2) The office of the Treasurer of State and the board of the  
 6 Arkansas Higher Education Assistance Authority, shall work together to  
 7 jointly market, as appropriate, the Arkansas Prepaid Tuition Plan and the  
 8 Savings Plan.

9 (d) Assets of the fund shall constitute public funds of the state and  
 10 may be invested in any instrument, obligation, security, or property that  
 11 constitutes legal investments for the investment of public funds in the state  
 12 that are deemed most appropriate by the board and may be pooled for  
 13 investment purposes with any other investment of the state that is eligible  
 14 for asset pooling.

15 (e) The fund, through the Treasurer of State, may receive and deposit  
 16 into the fund gifts made by any individual or agency as deemed acceptable by  
 17 the board.

18 (f) There is created a separate account within the Treasurer of  
 19 State's office to be known as the Prepaid Postsecondary Tuition  
 20 Administrative Account for the purposes of implementing and maintaining the  
 21 Arkansas Prepaid Affordable College Tuition Trust Fund. Funds may be  
 22 transferred from the unclaimed property fund to the administrative account  
 23 and shall be repaid to the abandoned property fund no later than three (3)  
 24 years after the transfer. The board may establish administrative fees for  
 25 handling prepaid tuition contracts and deposit the money in this account.

26 (g) Four (4) years after the effective date of this Act, the  
 27 administration of the fund shall be transferred from the office of the  
 28 Treasurer of State to the Arkansas Higher Education Assistance Authority  
 29 unless the General Assembly shall decide that the administration of the fund  
 30 shall remain in the office of the Treasurer of State.

31  
 32 SECTION 3. (a) The fund shall be governed by an eleven (11) member  
 33 board of directors.

34 (1) The board shall have five (5) ex officio voting members  
 35 including the Treasurer of State, the President of the Council on  
 36 Postsecondary Education or designee, the Secretary of the Finance Cabinet or

1 designee, the Secretary of the Revenue Cabinet or designee, the Chair of the  
2 Association of Arkansas Independent Colleges and Universities or designee,  
3 three (3) members appointed by the Treasurer of State, and three (3) members  
4 appointed by the Governor.

5 (2) The Executive Director of the Higher Education Assistance  
6 Authority or designee shall serve as a nonvoting member. The gubernatorial  
7 and Treasurer of State appointees shall have experience in finance,  
8 accounting, or investment management.

9 (b)(1) Of the members to be appointed initially by the Treasurer of  
10 State, one (1) shall be appointed for a three (3) year term, and two (2)  
11 shall be appointed for a four (4) year term.

12 (2) Of the members to be appointed by the Governor, two (2)  
13 shall be appointed for a term of two (2) years, and one (1) for a term of  
14 three (3) years.

15 (3) Thereafter, all appointments shall be for terms of four (4)  
16 years, except that appointments to fill vacancies shall be for the unexpired  
17 terms.

18 (4) No person shall be appointed to serve for more than two (2)  
19 successive four-year terms. No person holding a full-time office or position  
20 of employment with the state, any county or city, or any educational  
21 institution shall be eligible for gubernatorial appointment to the board.

22 (c) Members of the board shall receive no compensation, but shall be  
23 reimbursed expenses incurred in the performance of their duties at the same  
24 per diem and travel rate as is paid the employees of the state.

25 (d)(1) The Treasurer of State shall be the chair and presiding officer  
26 of the board.

27 (2) The Treasurer of State may appoint other officers as the  
28 board may deem advisable or necessary.

29 (3) A majority of the members of the board shall constitute a  
30 quorum for the transaction of the business of the fund.

31 (e) The initial board appointments shall be made by October 1, 2003.

32  
33 **SECTION 4. The board shall:**

34 (1) Promulgate administrative regulations, set fees, and adopt  
35 procedures as are necessary to implement the provisions of sections 1 through  
36 7 of this act;

1           (2) Enter into contractual agreements, including contracts for legal,  
2 actuarial, financial, and consulting services;

3           (3) Invest moneys in the fund in any instruments, obligations,  
4 securities, or property as permitted by law and deemed appropriate by the  
5 board;

6           (4) Procure insurance to protect against any loss in connection with  
7 the fund's property, assets, or activities and to indemnify board members  
8 from personal loss or accountability from liability arising from any action  
9 or inaction as a board member;

10           (5) Make arrangements with participating institutions in the state to  
11 fulfill obligations under prepaid tuition contracts including, but not  
12 limited to, payment from the fund of the tuition cost on behalf of a  
13 qualified beneficiary to attend a participating institution in which the  
14 beneficiary is admitted and enrolled;

15           (6) Develop requirements, procedures, and guidelines regarding prepaid  
16 tuition contracts including, but not limited to:

17                 (A) The termination, withdrawal, or transfer of payments under a  
18 prepaid tuition contract;

19                 (B) Tuition shortfalls;

20                 (C) Number of participants;

21                 (D) Time limitations for prepaid tuition contracts and the use  
22 of tuition benefits;

23                 (E) Tuition conversions;

24                 (F) Payment schedules;

25                 (G) Payroll deductions;

26                 (H) Penalties for failure of purchasers to adhere to contracts;

27 and

28                 (I) Transfer of prepaid tuition credits towards private  
29 education in the state or for out-of-state institutions;

30           (7) Obtain appropriate actuarial assistance to establish, maintain,  
31 and certify a fund sufficient to:

32                 (A) Defray the obligation of the fund;

33                 (B) Annually evaluate or cause to be evaluated, the actuarial  
34 soundness of the fund; and

35                 (C) Determine prior to each academic year:

36                         (i) The amount of prepaid tuition for each standard

1 tuition plan and for each participating institution for specific academic  
 2 years;

3 (ii) The corresponding required amount of tuition credits;

4 (iii) The amount of prepaid tuition conversion; and

5 (iv) The amount of prepaid tuition academic year  
 6 conversion;

7 (8) Make an annual report each year to the Legislative Council showing  
 8 the fund's condition; and

9 (9) Market and promote participation in the fund.

10  
 11 SECTION 5. (a)(1) The prepaid tuition contract entered into by the  
 12 purchaser and the board shall constitute an irrevocable pledge and guarantee  
 13 by the fund to pay for the tuition of a qualified beneficiary upon acceptance  
 14 and enrollment at a participating institution in proportion to the number of  
 15 tuition credits purchased.

16 (2) The fund shall pay this amount to the participating  
 17 institution on behalf of the qualified beneficiary.

18 (b) The fund shall pay the amount of any tuition shortfall to the  
 19 participating institution on behalf of the qualified beneficiary.

20 (c) The purchaser or qualified beneficiary shall pay to the  
 21 participating institution the amount of any prepaid tuition academic year  
 22 conversion shortfall and the amount of any prepaid tuition conversion  
 23 shortfall.

24 (d) A qualified beneficiary attending a participating institution may  
 25 apply tuition credits to a specific academic year at the maximum course load  
 26 or maximum number of credit hours generally permitted to full-time  
 27 undergraduates at that institution.

28 (e)(1) The board and participating institutions may agree that tuition  
 29 credits remaining in a prepaid tuition account after tuition is paid may be  
 30 converted into other educational expense credits under administrative  
 31 regulations promulgated by the board in compliance with Section 529 of the  
 32 Internal Revenue Code.

33 (2) The board may permit the use of tuition credits for part-  
 34 time undergraduate enrollment or graduate programs at participating  
 35 institutions, after an appropriate conversion.

36 (3) Any prepaid tuition remaining in a prepaid tuition account,

1 for reasons other than termination of the account as provided for in section  
2 7 of this act, shall be refunded to the purchaser or the purchaser's  
3 designee.

4 (f) The value of the prepaid tuition credits shall not be used in  
5 calculating personal asset contribution for determining eligibility and need  
6 for student loan programs, student grant programs, or other student aid  
7 programs administered by any agency of the state, except as otherwise may be  
8 provided by federal law.

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10 SECTION 6. (a)(1) Purchasers buying tuition credits for a qualified  
11 beneficiary shall enter into prepaid tuition contracts with the board.

12 (2) These contracts shall be in a form as shall be determined by  
13 the office.

14 (3) The contract shall provide for the purchase of tuition  
15 credits for prepaid tuition for the qualified beneficiary from one (1) to  
16 four (4) specific academic years.

17 (b) Upon written notification to the office, a purchaser may amend the  
18 prepaid tuition contract to change:

19 (1) The qualified beneficiary;

20 (2) The academic year or years for which tuition credits are  
21 purchased;

22 (3) A standard plan designation to a participating institution  
23 designation;

24 (4) A standard plan designation to another standard plan  
25 designation; or

26 (5) One (1) participating institution designation to another  
27 participating institution designation. The value of the tuition credit shall  
28 be adjusted under requirements of administrative regulations promulgated by  
29 the board.

30 (c) A prepaid tuition account shall not be subject to attachment,  
31 levy, or execution by any creditor of a purchaser or qualified beneficiary  
32 and shall be exempt from all state and local taxes including, but not limited  
33 to, the intangible personal property tax levied, the individual income tax  
34 levied, and the inheritance tax levied.

35 (d) Nothing in sections 1 through 7 of this act or in a prepaid  
36 tuition contract shall be construed as a promise or guarantee that a

1 qualified beneficiary shall be admitted to a participating institution, be  
2 allowed to continue to attend a participating institution after having been  
3 admitted, or graduate from a participating institution.

4 (e)(1) Prepaid tuition contract payments shall not be made in real or  
5 personal property other than cash and shall not exceed the prepaid tuition.

6 (2) Prepaid tuition contract payments may be made in lump sum  
7 installments.

8 (f)(1) The purchaser shall designate the qualified beneficiary at the  
9 time the purchaser enters into a prepaid tuition contract.

10 (2) In the case of gifts made to the fund, the board shall  
11 designate a qualified beneficiary at the time of the gift.

12 (g)(1) The prepaid tuition contract shall provide that the purchaser  
13 and the qualified beneficiary shall not directly or indirectly or otherwise  
14 control the investment of the prepaid tuition account or earnings on the  
15 account.

16 (2) Payments made for prepaid tuition shall be accounted for  
17 separately for each qualified beneficiary.

18 (3) No interest or earnings on a prepaid tuition contract of the  
19 purchaser or qualified beneficiary shall be pledged or otherwise encumbered  
20 as security of a debt.

21 (h) A prepaid tuition contract does not constitute a security.

22  
23 SECTION 7. (a) Upon termination of a prepaid tuition contract, the  
24 office shall pay from the fund to the purchaser or the purchaser's designee  
25 the value of the tuition credits if the contract is terminated for any of the  
26 following:

27 (1) The death of the qualified beneficiary;

28 (2) The disability of the qualified beneficiary that, in the opinion  
29 of the office, would make attendance by the beneficiary at a participating  
30 institution impossible or unreasonably burdensome;

31 (3) The purchase price of the tuition credits if the contract is  
32 terminated for any of the following:

33 (A) Failure of the qualified beneficiary who, in the opinion of  
34 the office, has made a good faith attempt to gain admission to a  
35 participating or nonparticipating institution within the time limits imposed  
36 by the board; or

1           (B) The movement of a family of a qualified beneficiary from  
2 Arkansas to another state with a savings plan.

3           (b)(1) Upon termination of a prepaid tuition account as a result of a  
4 decision by the qualified beneficiary to attend a nonparticipating  
5 institution, the office at the direction of the beneficiary and upon  
6 presentation of proof of the beneficiary's acceptance by and enrollment in  
7 the nonparticipating institution, shall pay from the fund to the institution  
8 the value of the tuition credits as determined by the board of directors for  
9 the postsecondary education prepaid tuition program.

10           (2) If the cost of tuition exceeds the value of the tuition  
11 credits, it shall be the responsibility of the beneficiary to pay the  
12 difference.

13           (3) If the value of the tuition credits exceeds the cost of  
14 tuition, the beneficiary shall be given a refund equal to the difference.

15           (c) At the option of the purchaser or the purchaser's designee, the  
16 purchase price of any unused tuition credits may be carried forward to  
17 another academic year or refunded by the office from the fund.

18           (d) Upon termination of a tuition account as a result of a decision by  
19 the qualified beneficiary not to attend a participating or nonparticipating  
20 institution, within time limits determined by the board, the purchaser or  
21 purchaser's designee shall receive the purchase price of the tuition credits.

22           (e) The office may impose a fee upon termination of the account for  
23 administrative costs and deduct the fee from the amount otherwise payable  
24 under this section.

25           (f) If a qualified beneficiary is awarded a scholarship that covers  
26 tuition costs included in a prepaid tuition contract, the purchaser or the  
27 purchaser's designee shall receive a refund from the fund by the office  
28 consisting of the amount of the prepaid tuition for the number of tuition  
29 credits purchased for that academic year.

30           (g) If the purchaser wishes to transfer funds from the prepaid tuition  
31 account to the Arkansas Higher Educational Savings Plan Trust, the purchaser  
32 may do so under administrative regulations promulgated by the board of  
33 directors of the Arkansas Prepaid Affordable College Tuition Trust Fund and  
34 the board of the Arkansas Higher Education Assistance Authority.

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36           SECTION 8. The office of the Treasurer of State for the purpose of

1 implementing and administering the prepaid tuition account program  
2 established in sections 1 through 7 of this act. The program shall provide  
3 for the purchase of tuition credits for a beneficiary to attend a  
4 participating postsecondary institution.

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6 SECTION 9. If the current prepaid contract obligations of the program  
7 exceed the market value of the program assets, at the request of the board,  
8 the Governor shall include in the annual budget requests submitted to the  
9 General Assembly an appropriation in the amount equal to the difference  
10 between the current prepaid contract obligations and the market value of the  
11 program assets.

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13 /s/ Bright  
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