

1 State of Arkansas As Engrossed: H1/25/17 H1/26/17

2 91st General Assembly **A Bill**

3 Regular Session, 2017 HOUSE BILL 1222

4

5 By: Representatives Dotson, Ballinger, Bentley, Bragg, Brown, Collins, Gonzales, G. Hodges, Lowery,
6 Lundstrum, McCollum, D. Meeks, Pilkington, Pitsch, Richmond, Sullivan, Farrer, Rushing, Gates,
7 Payton

8 By: Senators B. Johnson, Hester, J. English

9

10 **For An Act To Be Entitled**

11 AN ACT TO ESTABLISH THE ARKANSAS PARENTAL EMPOWERMENT
12 FOR EDUCATION CHOICE ACT OF 2017; TO DECLARE AN
13 EMERGENCY; AND FOR OTHER PURPOSES.

14

15

16

Subtitle

17 THE ARKANSAS PARENTAL EMPOWERMENT FOR
18 EDUCATION CHOICE ACT OF 2017; AND TO
19 DECLARE AN EMERGENCY.

20

21

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

23

24 SECTION 1. Arkansas Code Title 6, Chapter 15, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 29 - Arkansas Parental Empowerment for Education Choice Act
27 of 2017

28

29 6-15-2901. Title.

30 This subchapter shall be known and may be cited as the "Arkansas
31 Parental Empowerment for Education Choice Act of 2017".

32

33 6-15-2902. Findings - Intent.

34 (a) The General Assembly finds that:

35 (1) Each child in this state should have an opportunity to
36 receive an appropriate education that fits his or her needs regardless of



1 income or the neighborhood in which the child lives;

2 (2) A parent should be able to make the education decisions for
3 his or her child;

4 (3) An appropriate educational opportunity that fits a child's
5 individual needs is important to the civic and economic health of the state;
6 and

7 (4) Providing an appropriate educational opportunity to each
8 child in this state is a paramount concern of the General Assembly.

9 (b) It is the intent of the General Assembly to ensure that resources
10 are available to give a parent the means and the choice to provide his or her
11 child with an appropriate educational opportunity.

12
13 6-15-2903. Definitions.

14 As used in this subchapter:

15 (1) "Curriculum" means a complete course of study for a
16 particular content area or grade level, including without limitation any
17 required supplemental materials and associated online instruction;

18 (2) "Eligible contribution" means a monetary contribution from
19 an eligible taxpayer or corporation, subject to the restrictions provided in
20 this subchapter, to an eligible nonprofit organization;

21 (3) "Eligible nonprofit organization" means a charitable
22 organization that:

23 (A) Is exempt from federal income tax under 26 U.S.C. §
24 501(c)(3) of the Internal Revenue Code, as in effect on January 1, 2017;

25 (B) Is an Arkansas entity formed under the Arkansas
26 Nonprofit Corporation Act of 1993, § 4-33-101 et seq., and whose principal
27 office is located in the state;

28 (C) Is certified by the Department of Finance and
29 Administration under § 6-15-2904;

30 (D) Complies with the operational requirements under § 6-
31 15-2905; and

32 (E) Receives contributions to fund and administer
33 education savings accounts;

34 (4) "Eligible student" means a resident of this state who is
35 eligible to enroll in a public school in any level from kindergarten through
36 grade twelve (K-12);

1 (5) "Eligible taxpayer" means a business or individual,
2 including without limitation a corporation, partnership, limited liability
3 company, and sole proprietorship;

4 (6) "National school lunch student" means a student who is
5 eligible for free or reduced-price meals under the National School Lunch Act,
6 42 U.S.C. § 1751 et seq., unless the student is eligible for free or reduced-
7 price meals solely because the public school district is participating in the
8 special assistance certification and reimbursement alternative implemented
9 under 42 U.S.C. § 1759a;

10 (7) "Operator" means:

11 (A) A president, officer, or board member of an eligible
12 nonprofit organization or a person with equivalent decision-making authority
13 over an eligible nonprofit organization; or

14 (B) An owner or other person with equivalent decision-
15 making authority over a provider of educational services that receives
16 payment under § 6-15-2908 from an education savings account; and

17 (8) "Parent" means the parent or legal guardian of an eligible
18 student.

19
20 6-15-2904. Application to become an eligible nonprofit organization.

21 (a) An organization that seeks to become an eligible nonprofit
22 organization shall apply to the Department of Finance and Administration for
23 initial certification or renewal of certification as an eligible nonprofit
24 organization by May 1 before the academic year for which the organization
25 intends to fund education savings accounts.

26 (b)(1) An application for initial certification under subsection (a)
27 of this section shall include:

28 (A) A copy of the organization's incorporation documents
29 under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;

30 (B) A copy of the organization's Internal Revenue Service
31 determination letter as a Section 501(c)(3) not-for-profit organization;

32 (C) A description of the organization's:

33 (i) Financial plan that demonstrates sufficient
34 funds to operate throughout the academic year; and

35 (ii) Organizational chart;

36 (D) A description of the methodology the organization will

1 use to verify whether a student is eligible to establish an education savings
2 account;

3 (E) A description of the application process the
4 organization will use;

5 (F) A description of the methodology the organization will
6 use to establish and fund education savings accounts; and

7 (G) A description of how the organization will comply with
8 the operational requirements under § 6-15-2905.

9 (2) In addition to the information required under subdivision
10 (b)(1) of this section, an application for renewal of certification shall
11 include:

12 (A) The organization's completed Internal Revenue Service
13 Form 990 submitted no later than November 30 of the year before the academic
14 year that the organization intends to fund education savings accounts;

15 (B) A copy of the audit required under § 6-15-2910; and

16 (C) An annual report that includes:

17 (i) The number of applications the organization
18 received, by county and by grade;

19 (ii) The number of applications the organization
20 received from national school lunch students or students who would meet the
21 qualifications as a national school lunch student if the student was enrolled
22 in a public school district;

23 (iii) The number of applications the organization
24 approved from the applications received under subdivision (b)(2)(C)(ii) of
25 this section;

26 (iv) The number of education savings accounts the
27 organization established on behalf of eligible students;

28 (v) The amount of funds the organization:

29 (a) Received for the purposes of this
30 subchapter; and

31 (b) Distributed into education savings
32 accounts;

33 (vi) An accounting of remaining funds after the
34 distribution into education savings accounts and the obligation of those
35 funds;

36 (vii) A description of the organization's

1 administrative expenses under § 6-15-2905; and

2 (viii) A description of how the organization has
3 complied with the operational requirements under § 6-15-2905.

4 (c) Within sixty (60) days after receipt of the application under this
5 section, the Department of Finance and Administration shall certify the
6 organization as an eligible nonprofit organization if the organization
7 demonstrates that it meets the requirements under this subchapter.

8 (d) The Department of Finance and Administration and the Department of
9 Education shall maintain a public registry of currently certified eligible
10 nonprofit organizations on their websites.

11
12 6-15-2905. Operation of an eligible nonprofit organization.

13 (a) An eligible nonprofit organization:

14 (1) Shall not discriminate in approving an application for an
15 education savings account on the basis of gender, national origin, race,
16 ethnicity, religion, or disability;

17 (2)(A) Shall allocate one hundred percent (100%) of the eligible
18 nonprofit organization's annual revenue from eligible contributions under §
19 26-51-515 for funding education savings accounts.

20 (B) An eligible nonprofit organization may use any of its
21 revenue other than eligible contributions under § 26-51-515, including
22 without limitation contributions not made under § 26-51-515, for:

23 (i) Administrative expenses of the eligible
24 nonprofit organization; and

25 (ii) Funding education savings accounts.

26 (C) All interest accrued from eligible contributions shall
27 be used for funding education savings accounts;

28 (3) Shall not have an operator or employee who owns, operates,
29 or is employed by an entity that receives a payment for services from an
30 education savings account under § 6-15-2908;

31 (4) Shall not establish an education savings account for the
32 child of an operator or employee of the eligible nonprofit organization;

33 (5) Shall not allow donors to designate their eligible
34 contributions to specific student beneficiaries or any specific expense under
35 § 6-15-2908(a) as a condition of an eligible contribution to the eligible
36 nonprofit organization;

1 (6) Shall maintain separate accounts for education savings
2 account funds and operating funds;

3 (7)(A) With prior approval of the Department of Finance and
4 Administration, may transfer funds to another eligible nonprofit organization
5 if additional funds are required to meet education savings account demand at
6 the receiving eligible nonprofit organization.

7 (B) A transfer shall be limited to the greater of five
8 hundred thousand dollars (\$500,000) or twenty percent (20%) of the total
9 eligible contributions received by the eligible nonprofit organization making
10 the transfer.

11 (C) All transferred funds shall be deposited by the
12 receiving eligible nonprofit organization into its account for education
13 savings accounts.

14 (D) All transferred funds received by any eligible
15 nonprofit organization shall be separately disclosed in the annual financial
16 audit under § 6-15-2910;

17 (8)(A) Shall:

18 (i) Prepare and submit quarterly reports to the
19 Department of Finance and Administration; and

20 (ii) Submit in a timely manner any information
21 requested by the Department of Education relating to the education savings
22 account established by the eligible nonprofit organization, including without
23 limitation information requested in support of any evaluation of the program
24 authorized by the state.

25 (B) The reports and information under subdivision
26 (a)(8)(A) of this section shall also be made available on the website of the
27 eligible nonprofit organization; and

28 (9)(A) Establish a process by which individuals may notify the
29 eligible nonprofit organization of any violation by a parent, provider of
30 educational services that receives payment from an education savings account
31 under § 6-15-2908, or public school district of state laws relating to the
32 establishment and use of education savings accounts.

33 (B) The eligible nonprofit organization shall conduct an
34 inquiry of any written complaint of a violation of this section or make a
35 referral to the appropriate agency for an investigation.

36 (b)(1) The Department of Finance and Administration shall send written

1 notice to an eligible nonprofit organization if the Department of Finance and
2 Administration determines that the eligible nonprofit organization has
3 violated any provision of this subchapter.

4 (2)(A) The eligible nonprofit organization that receives notice
5 under subdivision (b)(1) of this section has sixty (60) days to correct the
6 violation identified by the Department of Finance and Administration in the
7 notice.

8 (B) If the eligible nonprofit organization fails or
9 refuses to comply after sixty (60) days, the Department of Finance and
10 Administration may revoke the certification of the eligible nonprofit
11 organization.

12 (c)(1) An eligible nonprofit organization may request an
13 administrative hearing on the revocation of the eligible nonprofit
14 organization's certification.

15 (2) A final decision of the Department of Finance and
16 Administration under this section is subject to judicial review.

17 (d)(1) An eligible nonprofit organization whose certification has been
18 revoked under subdivision (b)(2)(B) of this section shall not accept any
19 further eligible contributions to the eligible nonprofit organization for the
20 purpose of funding education savings accounts.

21 (2) If the eligible nonprofit organization received any
22 contributions for the purpose of funding education savings accounts after the
23 date of notice of the revocation of its certification, the eligible nonprofit
24 organization shall refund the contributions.

25 (e)(1) An eligible nonprofit organization whose certification has been
26 revoked under subdivision (b)(2)(B) of this section shall transfer all
27 remaining funds held by the eligible nonprofit organization for the purpose
28 of funding education savings accounts to other eligible nonprofit
29 organizations to fund education savings accounts.

30 (2) An eligible nonprofit organization that transfers funds to
31 other eligible nonprofit organizations under subdivision (e)(1) of this
32 section shall notify the Department of Finance and Administration of the
33 amount of funds transferred and the eligible nonprofit organizations that
34 received the transfers.

35 (f)(1) If an eligible nonprofit organization determines it cannot
36 continue in operation for any reason the eligible nonprofit organization,

1 with the approval of the Department of Finance and Administration, shall
2 transfer its funds to another eligible nonprofit organization.

3 (2) An eligible nonprofit organization that receives a transfer
4 of funds under subdivision (f)(1) of this section shall operate the education
5 savings accounts established by the eligible nonprofit organization that
6 transferred the funds, if funds are available.

7
8 6-15-2906. Establishment of education savings accounts - Payments.

9 (a) An eligible nonprofit organization may contract with financial
10 institutions to establish education savings accounts for eligible students.

11 (b)(1) An eligible nonprofit organization shall transfer into an
12 education savings account of an eligible student an equivalent of the
13 foundation funding amount under § 6-20-2305(a)(2) for each academic year.

14 (2) The transfers made by an eligible nonprofit organization
15 under subdivision (b)(1) of this section shall be in quarterly installments
16 throughout the academic year.

17
18 6-15-2907. Application for an education savings account.

19 (a) A parent may apply to an eligible nonprofit organization to
20 establish an education savings account for an eligible student.

21 (b)(1) The eligible nonprofit organization shall approve an
22 application for an education savings account upon:

23 (A) Verifying that the student on whose behalf the parent
24 is applying is an eligible student; and

25 (B) Entering into the agreement with the parent under
26 subsection (c) of this section.

27 (2) The eligible nonprofit organization shall approve
28 applications for education savings accounts in the following order of
29 priority:

30 (A) First, to eligible students who received funding in an
31 education savings account during the previous academic year;

32 (B) Second, to the sibling or siblings of an eligible
33 student who has an education savings account established on behalf of the
34 eligible student under this subchapter if the sibling or siblings meet the
35 criteria of an eligible student;

36 (C) Third, to eligible students retained on the previous

1 academic year's wait list;

2 (D)(i) Fourth, through a weighted lottery as provided
3 under subdivision (b)(2)(D)(ii), unless the eligible student qualifies for
4 priority under subdivision (b)(2)(A)-(C) of this section.

5 (ii)(a) The weighted lottery under subdivision
6 (b)(2)(D)(i) of this section shall ensure that the percentage of applications
7 the eligible nonprofit organization approves for eligible students who would
8 meet the qualifications as national school lunch students if the eligible
9 students were enrolled in a public school district is at least equal to the
10 percentage of national school lunch students in Arkansas, as determined by
11 the Department of Education.

12 (b) If the percentage of applications the
13 eligible nonprofit organization receives from eligible students who would
14 meet the qualifications as national school lunch students if the eligible
15 students were enrolled in a public school district is less than the
16 percentage of national school lunch students in Arkansas, as determined by
17 the Department of Education, the eligible nonprofit organization shall
18 approve:

19 (1) Every application from each eligible
20 student who would meet the qualifications as a national school lunch student
21 if the eligible student was enrolled in a public school district; and

22 (2) By lottery, applications from other
23 eligible students to the extent that available funds are exhausted.

24 (3) The eligible nonprofit organization shall only approve an
25 application if funds are available.

26 (c) As part of the application process, a parent shall:

27 (1) Enter into an agreement with the eligible nonprofit
28 organization:

29 (A) To use the funds in the education savings account only
30 for the expenses under § 6-15-2908;

31 (B)(i) Not to enroll the eligible student in a public
32 school.

33 (ii) A parent who uses an education savings account
34 for contracted services from a public school district under § 6-15-2908(a)(7)
35 is not in violation of subdivision (c)(1)(B)(i) of this section;

36 (C) Not to accept a Succeed Scholarship under § 6-41-801

1 et seq. or any other state funds under a program intended to provide funding
2 for tuition in a nonpublic school; and

3 (D) To provide to the eligible student an organized,
4 appropriate educational program with measurable annual goals; and

5 (2)(A) Sign a waiver on a form developed by the Department of
6 Education that releases:

7 (i) The State of Arkansas from any legal obligation
8 to provide services or education to the eligible student, except as may be
9 required by federal law; and

10 (ii) The student's resident school district from any
11 legal obligation to provide services or education to the eligible student
12 while the student is not enrolled in the student's resident school district,
13 except as may be required by federal law.

14 (B) The waiver under subdivision (c)(2)(A) of this section
15 shall have the same effect as a parental placement under 20 U.S.C. §
16 1412(10)(a) of the Individuals with Disabilities Education Act, as it existed
17 on January 1, 2017.

18 (d) Upon application by the parent, the eligible nonprofit
19 organization shall annually renew an eligible student's education savings
20 account, if funds are available.

21
22 6-15-2908. Education savings account.

23 (a) A parent shall use the funds in the education savings account
24 established on behalf of an eligible student only for the following expenses
25 of the eligible student:

26 (1) Tuition or fees for a:

27 (A) Nonpublic school in this state; or

28 (B) Nonpublic online learning program or course;

29 (2) Textbooks required by a nonpublic school;

30 (3) Tutoring services provided by a:

31 (A) Teacher licensed by the State Board of Education;

32 (B) Person qualified under § 6-15-1004 and rules of the
33 state board as a substitute teacher in this state;

34 (C) Person who has experience teaching at an institution
35 of higher education; or

36 (D) Person or entity accredited as a tutor or a tutoring

1 entity by a state, regional, or national accrediting organization;

2 (4) Curriculum or other instructional materials;

3 (5) Fees for:

4 (A) Nationally standardized assessments, including without
5 limitation the assessments required by the state board of all public school
6 students in this state;

7 (B) Advanced Placement examinations;

8 (C) College placement examinations, including without
9 limitation the ACT or the SAT;

10 (D) Industry certification examinations; and

11 (E) Other assessments necessary to complete an eligible
12 student's course of study;

13 (6) Fees for specialized after-school or summer education
14 programs whose primary purpose is to provide academic instruction;

15 (7) Contracted services provided by a public school district,
16 including without limitation individual classes and extracurricular programs;

17 (8) Contributions to a college savings account, including
18 without limitation:

19 (A) An account established pursuant to the Arkansas Tax-
20 Deferred Tuition Savings Program under § 6-84-107; and

21 (B) A Coverdell education savings account under 26 U.S.C.
22 § 530;

23 (9) Tuition and fees at an institution of higher education;

24 (10) Textbooks and materials related to coursework at an
25 institution of higher education;

26 (11) Specialized services necessary to facilitate an eligible
27 student's education, including without limitation:

28 (A) Applied behavior analysis services as defined under §
29 23-99-418;

30 (B) Speech-language pathology services as defined under §
31 17-100-103;

32 (C) Occupational therapy services as defined under § 17-
33 88-102;

34 (D) Physical therapy services as defined under § 17-93-
35 102;

36 (E) Audiology services as defined under § 17-100-103; and

1 (F) Other services approved by the Department of
2 Education; and

3 (12) Transportation required for travel to and from a provider
4 of educational services not to exceed ten percent (10%) per academic year of
5 the funds transferred into the education savings account under § 6-15-2906
6 for that academic year.

7 (b)(1) A provider of educational services receiving payments under
8 this section shall not share with, refund to, or rebate to a parent or
9 eligible student any money from an education savings account.

10 (2) Any refund or rebate for services under this section shall
11 be credited directly to the eligible student's education savings account.

12 (c) Funds in an education savings account not used in an academic year
13 may be carried over to the next academic year.

14
15 6-15-2909. Duration of the program – Return of funds.

16 (a) If funds are available, an eligible nonprofit organization shall
17 continue making transfers into an education savings account under § 6-15-2906
18 until:

19 (1) The parent does not apply under § 6-15-2907(d) to renew the
20 education savings account;

21 (2) The eligible nonprofit organization determines that the
22 student is no longer an eligible student;

23 (3) The parent of the eligible student fails to comply with the
24 agreement under § 6-15-2907(c);

25 (4)(A) The eligible student enrolls in a public school.

26 (B)(i) A parent shall immediately notify the eligible
27 nonprofit organization if the eligible student enrolls in a public school.

28 (ii) If an eligible student enrolls in a public
29 school, the eligible nonprofit organization shall place the education savings
30 account in inactive status for a maximum period of one (1) academic year,
31 during which the funds in the education savings account shall be frozen in
32 place.

33 (iii) After one (1) academic year, the eligible
34 nonprofit organization shall:

35 (a) Return the education savings account to
36 active status if:

1 (1) The parent notifies the eligible
2 nonprofit organization that the student is no longer enrolled in a public
3 school; and

4 (2) The student continues to meet the
5 eligibility requirements under this subchapter; or

6 (b) Close the education savings account if:

7 (1) The parent does not notify the
8 eligible nonprofit organization that the student is no longer enrolled in a
9 public school; or

10 (2) The student ceases to meet the
11 eligibility requirements under this subchapter;

12 (5) The student graduates from high school; or

13 (6) The Commissioner of Education suspends or revokes the use of
14 an education savings account upon a finding of fraud or abuse, including
15 without limitation accepting a refund or rebate in violation of § 6-15-
16 2908(b).

17 (b) Any funds remaining in an education savings account after an
18 eligible student graduates from high school may continue to be used for the
19 purposes under § 6-15-2908(a)(9) and (10) until the student reaches twenty-
20 two (22) years of age, at which time the education savings account shall be
21 closed.

22 (c) If an education savings account is closed under this section, any
23 remaining funds shall be returned to the eligible nonprofit organization that
24 contributed funds to the education savings account.

25
26 6-15-2910. Audit.

27 (a) By October 1 of each year, an eligible nonprofit organization
28 shall have an annual financial audit of its accounts and records conducted in
29 accordance with generally accepted auditing standards by an independent
30 certified public accountant licensed in this state.

31 (b) An eligible nonprofit organization shall provide to the Department
32 of Finance and Administration a copy of the audit required under subsection
33 (a) of this section within thirty (30) days of receiving the audit.

34
35 6-15-2911. Autonomy of nonpublic schools and providers of educational
36 services.

1 (a) A nonpublic school or provider of educational services that
2 receives payment from an education savings account under this subchapter is
3 not considered an agent or instrumentality of the State of Arkansas or a
4 public school district.

5 (b) The curriculum and education plan for a student attending a
6 nonpublic school or receiving educational services from a provider of
7 educational services under this subchapter is not subject to the regulatory
8 authority of the State Board of Education.

9 (c) As a condition of continued receipt of funds in an education
10 savings account, the state board may require a nonpublic school or provider
11 of educational services that receives payment from an education savings
12 account under this subchapter to certify on a semiannual basis under oath
13 that a student:

14 (1) Is and has been enrolled and attending the nonpublic school
15 except for excused absences; or

16 (2) Has been receiving educational services from the provider.

17
18 6-15-2912. Rules.

19 The Department of Education and the Department of Finance and
20 Administration shall promulgate rules to implement this subchapter.

21
22 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5, is
23 amended to add an additional section to read as follows:

24 26-51-515. Contributions for education savings accounts tax credit.

25 (a) A state income tax credit is allowed against the taxes imposed by
26 the Income Tax Act of 1929, § 26-51-101 et seq., for one hundred percent
27 (100%) of an eligible contribution made by the eligible taxpayer for a tax
28 year to an eligible nonprofit organization that is certified under § 6-15-
29 2901 et seq. at the time of contribution.

30 (b)(1) A state income tax credit under this section may not exceed
31 fifty percent (50%) of the tax due under this chapter for the taxable year,
32 after the application of any other allowable state income tax credits by the
33 eligible taxpayer.

34 (2) A state income tax credit under this section shall be
35 reduced by the difference between the amount of federal corporate income tax,
36 taking into account the state income tax credit under this section and the

1 amount of federal corporate income tax without application of the state
2 income tax credit under this section.

3 (3)(A) In tax year 2017, the total amount of state income tax
4 credits and carry forward of state income tax credits under this section is
5 limited to ten million dollars (\$10,000,000).

6 (B) In subsequent tax years:

7 (i) If there are funds remaining from contributions
8 made under this section for the previous tax year that were not used to fund
9 education savings accounts, the total amount of state income tax credits and
10 carry forward of state income tax credits under this section for that tax
11 year is limited to the amount in addition to the remaining funds that is
12 necessary to fund education savings accounts for the following eligible
13 students, plus ten percent (10%) of the total amount:

14 (a) Every eligible student who received an
15 education savings account in the academic year that ended in that tax year;
16 and

17 (b) Every eligible student on a wait list for
18 an education savings account in the academic year that ended in that tax
19 year; and

20 (ii) If there are no funds remaining from
21 contributions made under this section for the previous tax year that were not
22 used to fund education savings accounts, the total amount of state income tax
23 credits and carry forward of state income tax credits under this section for
24 that tax year is the amount necessary to fund education savings accounts for
25 the following eligible students, plus ten percent (10%) of the total amount:

26 (a) Every eligible student who received an
27 education savings account in the academic year that ended in that tax year;
28 and

29 (b) Every eligible student on a wait list for
30 an education savings account in the academic year that ended in that tax
31 year.

32 (c) An eligible taxpayer who files an Arkansas consolidated return as
33 a member of an affiliated group under § 26-51-805 may be allowed the state
34 income tax credit under this section on a consolidated return basis subject
35 to the limitation established under subdivisions (b)(1)-(3) of this section.

36 (d) Spouses who file separate returns for a tax year in which they

1 could have filed a joint return may each claim only one-half (1/2) of the
2 state income tax credit that would have been allowed for a joint return.

3 (e)(1) Any unused state income tax credit under this section may be
4 carried forward for five (5) consecutive tax years following the tax year in
5 which the state income tax credit was earned.

6 (2) An eligible taxpayer that seeks to carry forward an unused
7 amount of the state income tax credit under this section shall submit an
8 application for allocation of tax credits or carryforward credits in the year
9 that the eligible taxpayer intends to use the carryforward credits.

10 (3) An eligible taxpayer may not convey, assign, or transfer the
11 state income tax credit under this section to another entity unless all of
12 the assets of the eligible taxpayer are conveyed, assigned, or transferred in
13 the same transaction.

14 (f) The state income tax credit allowed by this section is in lieu of
15 any deduction for a contribution made to the eligible nonprofit organization
16 under 26 U.S.C. § 170 taken for state tax purposes.

17 (g) For the purposes of this section, a contribution for which a state
18 income tax credit is claimed that is made on or before the fifteenth day of
19 the fourth month following the close of the tax year may be applied to either
20 the current or preceding tax year and is considered to have been made on the
21 last day of that tax year.

22 (h)(1) An eligible taxpayer may rescind all or part of the eligible
23 taxpayer's allocated state income tax credit under this section.

24 (2) The amount rescinded shall become available for purposes of
25 the cap for the state fiscal year under this section to an eligible taxpayer
26 as approved by the Department of Finance and Administration if the eligible
27 taxpayer receives notice from the Department of Finance and Administration
28 that the rescission has been accepted by the Department of Finance and
29 Administration and the eligible taxpayer has not previously rescinded any or
30 all of the eligible taxpayer's allocated state income tax credit under this
31 section more than one (1) time in the previous three (3) tax years.

32 (3) Any amount rescinded under this subsection shall become
33 available to an eligible taxpayer on a first-come, first-served basis based
34 on state income tax credit applications received after the date the
35 rescission is accepted by the Department of Finance and Administration.

36 (i)(1) An application for a state income tax credit under this section

1 shall be submitted to the Department of Finance and Administration on forms
2 established by rule of the Department of Finance and Administration.

3 (2) The Department of Finance and Administration and the
4 Department of Education shall develop a cooperative agreement to assist in
5 the administration of this section.

6 (j) The Department of Finance and Administration shall adopt rules
7 necessary to administer this section, including without limitation rules
8 governing the allocation of state tax credits and carryforward credits under
9 this section on a first-come, first-served basis.

10
11 SECTION 3. This act is effective for tax years beginning on or after
12 January 1, 2017.

13
14 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
15 General Assembly of the State of Arkansas that each child in this state
16 should have an opportunity to receive an appropriate educational opportunity
17 that fits his or her needs regardless of income or the neighborhood in which
18 they live; that a parent should be able to make the education decisions for
19 his or her child; that an appropriate educational opportunity that fits a
20 child's individual needs is important to the civic and economic health of the
21 state; that providing an appropriate educational opportunity to each child in
22 this state is a paramount concern of the General Assembly; and that this act
23 is immediately necessary to ensure that resources are available to give a
24 parent the means and the choice to provide his or her child with an
25 appropriate educational opportunity. Therefore, an emergency is declared to
26 exist, and this act being immediately necessary for the preservation of the
27 public peace, health, and safety shall become effective on:

28 (1) The date of its approval by the Governor;

29 (2) If the bill is neither approved nor vetoed by the Governor,
30 the expiration of the period of time during which the Governor may veto the
31 bill; or

32 (3) If the bill is vetoed by the Governor and the veto is
33 overridden, the date the last house overrides the veto.

34
35 /s/Dotson