

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H1/25/17 H1/26/17 H1/27/17 H2/28/17*

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, *Boyd, Womack, Davis*

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

For An Act To Be Entitled

9
10 AN ACT TO ESTABLISH THE ARKANSAS PARENTAL EMPOWERMENT
11 FOR *EDUCATION CHOICE ACT OF 2017; AND FOR OTHER*
12 *PURPOSES.*
13
14

Subtitle

15
16 THE ARKANSAS PARENTAL EMPOWERMENT FOR
17 *EDUCATION CHOICE ACT OF 2017.*
18
19

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

22
23 *SECTION 1. Arkansas Code Title 6, Chapter 15, is amended to add an*
24 *additional subchapter to read as follows:*

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

27
28 *6-15-2901. Title.*

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

31
32 *6-15-2902. Findings - Intent.*

33 *(a) The General Assembly finds that:*

34 *(1) Each child in this state should have an opportunity to*
35 *receive an appropriate education that fits his or her needs regardless of*
36 *income or the neighborhood in which the child lives;*



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

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

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

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

11
12 6-15-2903. Definitions.

13 As used in this subchapter:

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

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

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

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

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

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

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

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

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

36 (5) "Eligible taxpayer" means a business or individual,

1 including without limitation a corporation, partnership, limited liability
2 company, and sole proprietorship;

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

9 (7) "Operator" means:

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

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

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

18
19 6-15-2904. Application to become an eligible nonprofit organization.

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

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

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

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

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

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

34 (ii) Organizational chart;

35 (D) A description of the methodology the organization will
36 use to verify whether a student is eligible to establish an education savings

1 account;

2 (E) A description of the application process and criteria
3 for approving applications the organization will use;

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

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

8 (2) The certification of an eligible nonprofit organization
9 shall renew automatically unless the Department of Finance and Administration
10 revokes the certification of the eligible nonprofit organization under § 6-
11 15-2905.

12 (c)(1) Except as provided in subdivision (c)(2) of this section,
13 within thirty (30) days after receipt of the application under this section,
14 the Department of Finance and Administration shall certify the organization
15 as an eligible nonprofit organization if the organization demonstrates that
16 it meets the requirements under this subchapter.

17 (2) There shall be no more than five (5) organizations certified
18 as eligible nonprofit organizations at any given time.

19 (d) The Department of Finance and Administration and the Department of
20 Education shall maintain a public registry of currently certified eligible
21 nonprofit organizations on the Department of Finance and Administration
22 website and the Department of Education website.

23
24 6-15-2905. Operation of an eligible nonprofit organization.

25 (a) An eligible nonprofit organization:

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

29 (2)(A) Shall allocate one hundred percent (100%) of the eligible
30 nonprofit organization's annual revenue from eligible contributions under §
31 26-51-515 for funding education savings accounts.

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

35 (i) Administrative expenses of the eligible
36 nonprofit organization; and

1 (ii) Funding education savings accounts.

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

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

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

9 (5) Shall not allow donors to designate their eligible
10 contributions to specific student beneficiaries or any specific expense under
11 § 6-15-2908(a) as a condition of an eligible contribution to the eligible
12 nonprofit organization;

13 (6) Shall maintain separate accounts for education savings
14 account funds and operating funds;

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

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

23 (C) All transferred funds shall be deposited by the
24 receiving eligible nonprofit organization into its account for education
25 savings accounts.

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

29 (8)(A) Shall:

30 (i) Prepare and submit quarterly reports to the
31 Department of Finance and Administration; and

32 (ii) Submit in a timely manner any information
33 requested by the Department of Education relating to the education savings
34 account established by the eligible nonprofit organization, including without
35 limitation information requested in support of any evaluation of the program
36 authorized by the state.

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

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

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

12 (b)(1) The Department of Finance and Administration shall send written
13 notice to an eligible nonprofit organization if the Department of Finance and
14 Administration determines that the eligible nonprofit organization has
15 violated any provision of this subchapter.

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

20 (B) If the eligible nonprofit organization fails or
21 refuses to comply after sixty (60) days, the Department of Finance and
22 Administration may revoke the certification of the eligible nonprofit
23 organization.

24 (c)(1) An eligible nonprofit organization may request an
25 administrative hearing under the Arkansas Tax Procedure Act, § 26-18-101 et
26 seq., on the revocation of the eligible nonprofit organization's
27 certification.

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

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

34 (2) If the eligible nonprofit organization received any
35 contributions for the purpose of funding education savings accounts after the
36 date of notice of the revocation of its certification, the eligible nonprofit

1 organization shall refund the contributions.

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

7 (2) An eligible nonprofit organization that transfers funds to
8 other eligible nonprofit organizations under subdivision (e)(1) of this
9 section shall notify the Department of Finance and Administration of the
10 amount of funds transferred and the eligible nonprofit organizations that
11 received the transfers.

12 (f)(1) If an eligible nonprofit organization determines it cannot
13 continue in operation for any reason the eligible nonprofit organization,
14 with the approval of the Department of Finance and Administration, shall
15 transfer its funds to another eligible nonprofit organization.

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

20 (g) To ensure compliance with § 6-15-2908, an eligible nonprofit
21 organization shall conduct:

22 (1) Annual audits of all education savings accounts; and

23 (2) Random audits of some education savings accounts throughout
24 the year.

25
26 6-15-2906. Establishment of education savings accounts – Payments.

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

29 (b)(1)(A) An eligible nonprofit organization shall make available for
30 each eligible student an equivalent of the foundation funding amount under §
31 6-20-2305(a)(2) for each academic year plus any amount carried over from
32 previous academic years under § 6-15-2908(c).

33 (B) The new funds for an academic year under subdivision
34 (b)(1)(A) of this section shall be made available in equal quarterly
35 installments of the foundation funding amount under § 6-20-2305(a)(2)
36 throughout the academic year.

1 (2) An eligible nonprofit organization shall maintain:

2 (A) A single account for education savings account funds
3 from which the eligible nonprofit organization shall make available the funds
4 under subdivision (b)(1) of this section for each eligible student; and

5 (B) Separate accounts for all other funds of the eligible
6 nonprofit organization, including without limitation funds for administrative
7 expenses.

8 (c) Funds received under this subchapter do not constitute taxable
9 income to the:

10 (1) Parent of the eligible student; or

11 (2) Eligible student.

12 (d) An eligible nonprofit organization:

13 (1) Shall develop a system for payment of funds that allows for:

14 (A) Direct payment from an education savings account to
15 education service providers or other entities for expenses under § 6-15-2908;
16 and

17 (B) Reimbursement to a parent via check, electronic funds
18 transfer, or other payment deemed to be commercially viable or cost-effective
19 upon the production by the parent of a receipt for expenses under § 6-15-
20 2908; and

21 (2) Except for reimbursements under subdivision (d)(1) of this
22 section, shall not issue funds directly to a parent.

23
24 6-15-2907. Application for an education savings account.

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

27 (b)(1) The eligible nonprofit organization shall approve by June 1 an
28 application for an education savings account upon:

29 (A) Verifying that the student on whose behalf the parent
30 is applying is an eligible student who satisfies the eligible nonprofit
31 organization's criteria for approving an application for an education savings
32 account; and

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

35 (2)(A) The eligible nonprofit organization shall approve
36 applications for education savings accounts in the following order of

1 priority:

2 (i) First, to eligible students who received funding
3 in an education savings account during the previous academic year;

4 (ii) Second, to the sibling or siblings of an
5 eligible student who has an education savings account established on behalf
6 of the eligible student under this subchapter if the sibling or siblings meet
7 the criteria of an eligible student;

8 (iii) Third, to eligible students retained on the
9 previous academic year's wait list who would meet the qualifications as
10 national school lunch students if the eligible students were enrolled in a
11 public school district;

12 (iv) Fourth, to new applicants who are eligible
13 students who would meet the qualifications as national school lunch students
14 if the eligible students were enrolled in a public school district;

15 (v) Fifth, to eligible students who are dependents
16 of members of the United States Armed Forces or National Guard who are
17 deployed in this state if the dependents are eligible to enroll in a public
18 school in this state in any level from kindergarten through grade twelve (K-
19 12);

20 (vi) Sixth, to all other eligible students retained
21 on the previous academic year's wait list; and

22 (vii) Seventh, to all other new applicants.

23 (B)(i) The eligible nonprofit organization shall approve
24 under subdivision (b)(2)(A) of this section a minimum of two (2) applications
25 from eligible students who attended a public school during the prior academic
26 year for every one (1) application the eligible nonprofit organization
27 approves from eligible students who attended a nonpublic school during the
28 prior academic year for the following applicants:

29 (a) For the first academic year education
30 savings accounts are established under this subchapter, all applicants; and

31 (b) For all academic years subsequent to the
32 first year education savings accounts are established under this subchapter,
33 applicants who did not receive funding in an education savings account during
34 the previous academic year.

35 (ii) For the purposes of subdivision (b)(2)(B)(i) of
36 this section, the following shall be considered eligible students who

1 attended a public school during the prior academic year:

2 (a) Eligible students who are entering
3 kindergarten for the first time;

4 (b) Eligible students who attended school in
5 another state during the previous academic year; and

6 (c) Eligible students who are new residents of
7 a public school district and are eligible to enroll in that public school
8 district.

9 (3)(A) An eligible nonprofit organization shall include in the
10 application for an education savings account:

11 (i) The same form used by the Department of
12 Education or a similar form to ascertain if an eligible student would meet
13 the qualifications as a national school lunch student if the eligible student
14 were enrolled in a public school district; and

15 (ii) A form to ascertain:

16 (a) If an eligible student attended a public
17 school during the prior academic year; and

18 (b) The public school district or open-
19 enrollment public charter school where the eligible student attended public
20 school.

21 (B) A parent shall complete the form under subdivision
22 (b)(3)(A)(i) of this section if the parent of the eligible student is
23 applying for priority approval under subdivisions (b)(2)(A)(iii) and (iv) of
24 this section.

25 (C) Each parent shall complete the form under subdivision
26 (b)(3)(A)(ii) of this section.

27 (4)(A)(i)(a) An eligible nonprofit organization may approve for
28 an academic year the applications of a maximum of one percent (1%) of
29 eligible students who were enrolled in a particular public school district
30 during the previous academic year as of October 15 of the immediately
31 preceding academic year.

32 (b) Annually by December 15, the Department of
33 Education shall report to each eligible nonprofit organization the number of
34 students who were enrolled in each public school district during the previous
35 academic year as of October 15 of the immediately preceding academic year.

36 (ii) Applications that are approved from eligible

1 students who reside in a particular public school district but who attended a
2 nonpublic school during the previous academic year do not count toward the
3 one percent (1%) maximum of eligible students who attended that public school
4 district under subdivision (b)(4)(A)(i) of this section.

5 (B)(i) An eligible nonprofit organization shall report to
6 a public school district by June 1 the number of applications of eligible
7 students the eligible nonprofit organization approved from that public school
8 district.

9 (ii) The eligible nonprofit organization is not
10 required under subdivision (b)(4)(B)(i) of this section to report to a public
11 school district if the eligible nonprofit organization did not approve any
12 applications of eligible students from that public school district.

13 (5) An eligible nonprofit organization that approved an
14 application for an eligible student who is a dependent of a member of the
15 United States Armed Forces or National Guard shall not make available
16 education savings account funds for the eligible student unless the eligible
17 student becomes a resident of the State of Arkansas.

18 (6) If funds are insufficient to approve all applications at any
19 priority level under subdivision (b)(2) of this section, a random, anonymous
20 selection method shall be used at that priority level.

21 (7) The eligible nonprofit organization shall only approve an
22 application if funds are available.

23 (8) All applications from students who apply for an education
24 savings account but are not approved shall remain confidential and shall not
25 be disclosed by the eligible nonprofit organization.

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 uses – Testing – Reporting.

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 state-mandated assessments required by the state board;

6 (B) Advanced Placement examinations;

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

9 (D) Industry certification examinations; and

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

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

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

16 (B) A public school district that contracts under
17 subdivision (a)(7)(A) of this section to allow an eligible student to enroll
18 in an academic course shall charge no more than an amount equal to one-sixth
19 (1/6) of the state foundation funding amount for each academic course in
20 which an eligible student is enrolled;

21 (8) Contributions to a college savings account, including
22 without limitation:

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

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

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

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

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

32 (A) Applied behavior analysis services as defined under §
33 23-99-418;

34 (B) Speech-language pathology services as defined under §
35 17-100-103;

36 (C) Occupational therapy services as defined under § 17-

1 88-102;

2 (D) Physical therapy services as defined under § 17-93-

3 102;

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

5 (F) Other services approved by the Department of

6 Education;

7 (12)(A) Transportation required for travel to and from a
8 provider of educational services not to exceed ten percent (10%) per academic
9 year of the education savings account funds made available for an eligible
10 student for that academic year.

11 (B) Transportation expenses under subdivision (a)(12)(A)
12 of this section shall be for mileage reimbursement at the reimbursement rate
13 prescribed by the Department of Finance and Administration for state
14 employees for that year; and

15 (13)(A) Uniforms purchased for a nonpublic school and costs of
16 computer hardware and software and other technological devices necessary for
17 the education of the eligible student.

18 (B) Funds used to purchase the items in subdivision
19 (a)(13)(A) of this section shall not exceed ten percent (10%) per academic
20 year of the education savings account funds made available for an eligible
21 student for that academic year.

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

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

27 (c)(1) Up to fifty percent (50%) of the funds in an education savings
28 account that were received for an academic year but not used in the academic
29 year may be carried over to the next academic year.

30 (2) Any unused funds not carried over to the next academic year
31 under subdivision (c)(1) of this section shall be returned to the eligible
32 nonprofit organization that contributed funds to the education savings
33 account.

34 (d)(1) A parent of an eligible student shall ensure that:

35 (A)(i) Each academic year the eligible student takes
36 either the state-mandated assessments or nationally norm-referenced tests

1 that measure learning gains in math and language arts.

2 (ii) Eligible students with a disability who were
3 exempt from taking state-mandated assessments in their prior public school
4 are exempt from the requirement under subdivision (d)(1)(A)(i) of this
5 section;

6 (B) The results of assessments or tests taken by the
7 eligible student under subdivision (d)(1)(A) of this section are reported to
8 the
9 Department of Education;

10 (C) The eligible student's information is reported in a
11 way that would allow the Department of Education to aggregate data by grade
12 level, gender, family income level, and race; and

13 (D) The Department of Education is informed of the
14 eligible student's graduation from high school.

15 (2) The Department of Education shall:

16 (A) Ensure compliance with all student privacy laws;

17 (B) Collect results of the assessments;

18 (C)(i) Provide to the public via the Department of
19 Education website after the third year of assessment and graduation related
20 data collection:

21 (a) The results of the assessments;

22 (b) Any associated learning gains; and

23 (c) Graduation rates.

24 (ii) The information shall be aggregated by each
25 eligible student's:

26 (a) Grade level;

27 (b) Gender;

28 (c) Family income level;

29 (d) Number of years receiving an education
30 savings account under this subchapter; and

31 (e) Race;

32 (D) Administer an annual parental satisfaction survey that
33 asks parents of eligible students receiving education savings accounts to
34 express:

35 (i) Their satisfaction with the education savings
36 accounts; and

1 (ii) Their opinions on other topics, items, or
2 issues that the Department of Education finds would elicit information about
3 the effectiveness of education savings accounts and the number of years their
4 eligible student has received an education savings account.

5
6 6-15-2909. Duration of the program – Return of funds.

7 (a) If funds are available, an eligible nonprofit organization shall
8 continue making available education savings account funds for an eligible
9 student under § 6-15-2906 until:

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

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

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

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

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

19 (ii) If an eligible student enrolls in a public
20 school, the eligible nonprofit organization shall cease making new education
21 savings account funds available for the eligible student.

22 (iii) An eligible student who enrolls in a public
23 school under subdivision (a)(4)(A) of this section may continue to use any
24 accumulated funds in the education savings account for expenses under § 6-15-
25 2908 until the eligible student reaches twenty-two (22) years of age, at
26 which time the education savings account shall be closed as provided under
27 subsection (c) of this section.

28 (iv) If the parent notifies the eligible nonprofit
29 organization that the student is no longer enrolled in a public school and
30 the student continues to meet the eligibility requirements under this
31 subchapter at the end of the academic year in which the student enrolls in a
32 public school, the eligible nonprofit organization shall resume making new
33 education savings account funds available under § 6-15-2906 for that student.

34 (v) If the parent does not notify the eligible
35 nonprofit organization under subdivision (a)(4)(B)(iv) of this section that
36 the student is no longer enrolled in a public school at the end of the

1 academic year in which the student enrolled in a public school, the student
2 must apply for an education savings account as a new applicant and be
3 approved by the eligible nonprofit organization in order to resume receiving
4 funds for the student's education savings account;

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

6 (6) The Commissioner of Education suspends or revokes the use of
7 an education savings account upon a finding of fraud or abuse, including
8 without limitation accepting a refund or rebate in violation of § 6-15-
9 2908(b).

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

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

18
19 6-15-2910. Audit.

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

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

27 (c) An audit under this section does not preclude an audit by the
28 department under § 26-18-401.

29
30 6-15-2911. Autonomy of nonpublic schools and providers of educational
31 services.

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

36 (b) The curriculum and education plan for a student attending a

1 nonpublic school or receiving educational services from a provider of
2 educational services under this subchapter is not subject to the regulatory
3 authority of the State Board of Education.

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

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

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

12
13 6-15-2912. Rules.

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

16
17 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5, is
18 amended to add an additional section to read as follows:

19 26-51-515. Tax credit for contributions for education savings
20 accounts.

21 (a) A state income tax credit is allowed against the taxes imposed by
22 the Income Tax Act of 1929, § 26-51-101 et seq., for sixty-five percent (65%)
23 of an eligible contribution approved by the Department of Finance and
24 Administration under subsection (b) of this section made by the taxpayer for
25 a tax year to an eligible nonprofit organization that is certified under the
26 Arkansas Parental Empowerment for Education Choice Act of 2017, § 6-15-2901
27 et seq., at the time of the contribution.

28 (b)(1)(A) Before making the contribution to an eligible nonprofit
29 organization under subsection (a) of this section, a taxpayer shall notify
30 the eligible nonprofit organization of the total amount of contributions that
31 the taxpayer intends to make to the eligible nonprofit organization.

32 (B) Beginning March 1 and ending April 15, before accepting
33 the contribution, the eligible nonprofit organization shall request
34 certification of the contribution from the Department of Finance and
35 Administration for the taxpayer's intended contribution amount.

36 (C) The Department of Finance and Administration shall

1 certify or deny the requested amount within twenty (20) days after receiving
2 the request from the eligible nonprofit organization.

3 (D) If the Department of Finance and Administration
4 certifies the request, the nonprofit organization shall immediately notify
5 the taxpayer that the requested amount was certified.

6 (E) In order to receive a tax credit under this section,
7 the taxpayer shall make the contribution in the certified amount within the
8 required twenty (20) days after receiving notice from the eligible nonprofit
9 organization that the requested contribution amount was certified.

10 (F)(i) If the eligible nonprofit organization receives the
11 certified contribution from the taxpayer within the required twenty (20)
12 days, the eligible nonprofit organization shall immediately notify the
13 Department of Finance and Administration so the Department of Finance and
14 Administration may record the tax credit on the taxpayer's account as of July
15 1.

16 (ii) If the eligible nonprofit organization does not
17 receive the certified contribution from the taxpayer within the required
18 twenty (20) days, the eligible nonprofit organization shall immediately
19 notify the Department of Finance and Administration.

20 (G) After the Department of Finance and Administration
21 receives notice that the eligible nonprofit organization did not receive the
22 certified contribution:

23 (i) The certification becomes void; and

24 (ii) The Department of Finance and Administration
25 shall no longer include that certified contribution amount when calculating
26 the state income tax credit limit under subsection (d) of this section for
27 the purpose of certified contributions.

28 (2)(A) Except as provided in subdivision (b)(3) of this section,
29 the Department of Finance and Administration shall certify contributions on a
30 first come, first served basis.

31 (B)(i) The Department of Finance and Administration shall
32 maintain a list of contributions that were denied because the state income
33 tax credit limit under subsection (d) of this section had been met.

34 (ii) If a certified contribution is not received and
35 becomes void under subdivision (b)(1)(G) of this section, the Department of
36 Finance and Administration shall certify a contribution that was denied under

1 subdivision (b)(2)(B)(i) of this section on a first come, first served basis.

2 (C) An eligible nonprofit organization shall report to the
3 Department of Finance and Administration by November 1 the amount of the
4 certified contributions under subdivision (b)(1) of this section received by
5 the eligible nonprofit organization being used to fund education savings
6 accounts for that academic year.

7 (3)(A) For tax credits issued in fiscal year 2019 only, the
8 Department of Finance and Administration shall certify contributions on a
9 priority basis to taxpayers identified by the eligible nonprofit organization
10 under subdivision (b)(3)(C) of this section as taxpayers:

11 (i) That contributed to the eligible nonprofit
12 organization during fiscal year 2018; and

13 (ii) Whose contributions were used to fund education
14 savings accounts.

15 (B) The Department of Finance and Administration shall
16 certify contributions on a priority basis under subdivision (b)(3)(A) of this
17 section up to the amount of the contribution made by a taxpayer that meets
18 the requirements under subdivisions (b)(3)(A)(i) and (ii) of this section.

19 (C) An eligible nonprofit organization shall notify the
20 Department of Finance and Administration of the taxpayers who meet the
21 requirements under subdivisions (b)(3)(A)(i) and (ii) of this section before
22 the Department of Finance and Administration begins certifying contributions
23 for fiscal year 2019.

24 (c) A state income tax credit under this section may not exceed fifty
25 percent (50%) of the tax due under this chapter for the taxable year, after
26 the application of any other allowable state income tax credits by the
27 eligible taxpayer.

28 (d)(1) In fiscal year 2019, the total amount of state income tax
29 credits made under this section shall equal the amount approved by the
30 Department of Finance and Administration under subdivision (b)(1) of this
31 section, not to exceed six million five hundred thousand dollars
32 (\$6,500,000).

33 (2) In subsequent fiscal years, the total amount of state income
34 tax credits made under this section shall be equal to ten percent (10%) more
35 than the total amount of certified contributions under subdivision (b)(1) of
36 this section from the previous fiscal year minus the difference between the

1 total amount of the certified contributions and the amount of certified
2 contributions that the eligible nonprofit organizations reported to the
3 Department of Finance and Administration under subdivision (b)(2)(C) of this
4 section as being used to fund education savings accounts.

5 (e) An eligible taxpayer who files an Arkansas consolidated return as
6 a member of an affiliated group under § 26-51-805 may be allowed the state
7 income tax credit under this section on a consolidated return basis subject
8 to the limitation established under subsections (c) and (d) of this section.

9 (f) Spouses who file separate returns for a tax year in which they
10 could have filed a joint return may each claim only one-half (1/2) of the
11 state income tax credit that would have been allowed for a joint return.

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

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

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

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

26 (i) For the purposes of this section, a contribution for which a state
27 income tax credit is claimed that is made on or before the fifteenth day of
28 the fourth month following the close of the tax year may be applied to either
29 the current or preceding tax year and is considered to have been made on the
30 last day of that tax year.

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

33 (2) The amount rescinded shall become available for purposes of
34 the cap for the state fiscal year under this section to an eligible taxpayer
35 as approved by the Department of Finance and Administration if the eligible
36 taxpayer receives notice from the Department of Finance and Administration

1 that the rescission has been accepted by the Department of Finance and
2 Administration and the eligible taxpayer has not previously rescinded any or
3 all of the eligible taxpayer's allocated state income tax credit under this
4 section more than one (1) time in the previous three (3) tax years.

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

9 (k)(1) An application for a state income tax credit under this section
10 shall be submitted to the Department of Finance and Administration on forms
11 established by rule of the Department of Finance and Administration.

12 (2) The Department of Finance and Administration and the
13 Department of Education shall develop a cooperative agreement to assist in
14 the administration of this section.

15 (1) The Department of Finance and Administration shall adopt rules
16 necessary to administer this section, including without limitation rules
17 governing the allocation of state tax credits and carryforward credits under
18 this section on a first-come, first-served basis.

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20 /s/Dotson
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