

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1509

5 By: Representative Brown
6 By: Senator J. English
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE ARKANSAS TAX-DEFERRED TUITION
10 SAVINGS PROGRAM; TO AMEND THE ARKANSAS TAX-DEFERRED
11 TUITION SAVINGS PROGRAM ACT; TO ADOPT RECENT CHANGES
12 CONTAINED IN THE INTERNAL REVENUE CODE RELATED TO THE
13 PROGRAM; TO CHANGE THE NAME OF THE PROGRAM; AND FOR
14 OTHER PURPOSES.

Subtitle

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18 TO AMEND THE ARKANSAS TAX-DEFERRED
19 TUITION SAVINGS PROGRAM ACT; TO ADOPT
20 RECENT CHANGES CONTAINED IN THE INTERNAL
21 REVENUE CODE; AND TO CHANGE THE NAME OF
22 THE PROGRAM.
23
24

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

26
27 SECTION 1. Arkansas Code § 6-84-101 is amended to read as follows:
28 6-84-101. Title.

29 This chapter shall be known and may be cited as the "~~Arkansas Tax-~~
30 ~~Deferred Tuition Savings Program Act~~" "Arkansas Brighter Future Plan Act".
31

32 SECTION 2. Arkansas Code § 6-84-102 is amended to read as follows:
33 6-84-102. Purpose.

34 It is the intent and purpose of this chapter to create and establish
35 the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Plan
36 pursuant to 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, to be



1 administered by the Section 529 Plan Review Committee through the adoption of
2 rules for the administration of the ~~program~~ plan.

3
4 SECTION 3. Arkansas Code § 6-84-103(3)-(6) concerning the definitions
5 used under the Arkansas Tax-Deferred Tuition Savings Program Act, are amended
6 to read as follows:

7 (3) "Act" means the Arkansas ~~Tax-Deferred Tuition Savings~~
8 ~~Program~~ Brighter Future Plan Act, § 6-84-101 et seq.;

9 (4)(A) "~~Arkansas Tax-Deferred Tuition Savings Program Trust~~"
10 "Arkansas Brighter Future Plan Trust" or "trust" means the trust created
11 under § 6-84-104.

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

14 (5) "Committee" means the Section 529 Plan Review Committee,
15 provided for in § 6-84-105, which shall oversee the administration of the
16 Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Plan and ensure
17 that the ~~program~~ plan complies with the provisions of this chapter and acts
18 in accordance with 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

19 (6) "Contribution" means:

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

23 (B) That portion of any rollover amount treated as a
24 contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

25
26 SECTION 4. Arkansas Code § 6-84-103(10), concerning the definitions
27 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
28 to read as follows:

29 (10) "Member of the family" shall have the same meaning as is
30 contained in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

31
32 SECTION 5. Arkansas Code § 6-84-103(12)-(15), concerning the
33 definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act,
34 are amended to read as follows:

35 (12) "Person" means a person as defined in 26 U.S.C. § 529, as
36 in effect on January 1, ~~2018~~ 2020;

1 (13) ~~“Program”~~ “Plan” means the Arkansas ~~Tax-Deferred Tuition~~
 2 ~~Savings Program~~ Brighter Future Plan established by this chapter;

3 (14) “Qualified higher education expenses” means tuition and
 4 other permitted expenses as set forth in 26 U.S.C. § 529, as in effect on
 5 January 1, ~~2018~~ 2020, for the enrollment or attendance of a designated
 6 beneficiary;

7 (15) “Qualified tuition program” means a qualified tuition
 8 program as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;

9
 10 SECTION 6. Arkansas Code § 6-84-103(17), concerning the definitions
 11 used under the Arkansas Tax-Deferred Tuition Savings Program Act, is amended
 12 to read as follows:

13 (17) “Rollover” means a disbursement or transfer from an account
 14 that is transferred to or deposited within sixty (60) calendar days of the
 15 transfer:

16 (A) Into an account of the same person for the benefit of
 17 the same designated beneficiary;

18 (B) To the credit of another person as a designated
 19 beneficiary if the transferee account was created under this chapter or under
 20 another qualified tuition program maintained in accordance with 26 U.S.C. §
 21 529, as in effect on January 1, ~~2018~~ 2020; or

22 (C)(i) Before January 1, 2026, into an ABLE account under
 23 26 U.S.C. § 529A(e)(6), as in effect on January 1, ~~2018~~ 2020, of the
 24 designated beneficiary or a member of the family of the designated
 25 beneficiary.

26 (ii) Subdivision (17)(C)(i) of this section does not
 27 apply to so much of a distribution which, when added to all other
 28 contributions made to the ABLE account for the taxable year, exceeds the
 29 limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1,
 30 ~~2018~~ 2020.

31
 32 SECTION 7. Arkansas Code § 6-84-104(a), concerning the creation of the
 33 Arkansas Tax-Deferred Tuition Savings Program Trust, is amended to read as
 34 follows:

35 (a) There is created the Arkansas ~~Tax-Deferred Tuition Savings Program~~
 36 Brighter Future Plan Trust.

1 SECTION 8. Arkansas Code § 6-84-105(b) and (c), concerning the
2 administration of the Arkansas Tax-Deferred Tuition Savings Program Act and
3 the authority and powers of the Section 529 Plan Review Committee, are
4 amended to read as follows:

5 (b) The committee shall adopt such rules as it deems necessary and
6 proper to administer this chapter and to ensure the compliance of the
7 Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Plan with 26
8 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

9 (c) The committee shall have the following powers, duties, and
10 functions:

11 (1) To establish, develop, implement, and maintain the ~~program~~
12 plan in a manner consistent with the provisions of this chapter and 26 U.S.C.
13 § 529, as in effect on January 1, ~~2018~~ 2020, and to obtain the benefits
14 provided by 26 U.S.C. § 529 for the ~~program~~ plan, account owners, and
15 designated beneficiaries;

16 (2) To adopt rules for the general administration of the ~~program~~
17 plan;

18 (3) To maintain, invest, and reinvest the funds contributed into
19 the ~~program~~ plan consistent with the investment restrictions established by
20 the committee and the standard of care described in the prudent investor rule
21 under § 24-2-610; and

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

28 (B) Contracts entered into by the committee may be for a
29 term of from one (1) to ten (10) years.

30
31 SECTION 9. Arkansas Code § 6-84-106 is amended to read as follows:

32 6-84-106. Investment direction.

33 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~
34 2020, no person shall have the right to direct the investment of any
35 contributions to or earnings from the Arkansas ~~Tax-Deferred Tuition Savings~~
36 ~~Program~~ Brighter Future Plan.

1
2 SECTION 10. Arkansas Code § 6-84-107(a)(1), concerning accounts under
3 the Arkansas Tax-Deferred Tuition Savings Program Act, is amended to read as
4 follows:

5 (a)(1) An account owner or contributor may establish an account by
6 making an initial contribution to the Arkansas ~~Tax-Deferred Tuition Savings~~
7 ~~Program~~ Brighter Future Plan, signing an application form approved by the
8 Section 529 Plan Review Committee and naming the account owner and the
9 designated beneficiary.

10
11 SECTION 11. Arkansas Code § 6-84-107(c) and (d), concerning accounts
12 under the Arkansas Tax-Deferred Tuition Savings Program Act, are amended to
13 read as follows:

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

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

21
22 SECTION 12. Arkansas Code § 6-84-107(e)(1), concerning savings
23 accounts under the Arkansas Tax-Deferred Tuition Savings Program Act, is
24 amended to read as follows:

25 (e)(1) The ~~program~~ plan shall be permitted to collect application,
26 account, or administrative fees to defray the costs of the ~~program~~ plan.

27
28 SECTION 13. Arkansas Code § 6-84-108(b), concerning the naming of a
29 designated beneficiary and transfers of accounts under the Arkansas Tax-
30 Deferred Tuition Savings Program Act, is amended to read as follows:

31 (b) At the direction of an account owner, all or a portion of an
32 account may be transferred to another account of which the designated
33 beneficiary is a member of the family of the designated beneficiary of the
34 transferee account if the transferee account was created by this chapter or
35 under another qualified tuition program maintained in accordance with 26
36 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

1
2 SECTION 14. Arkansas Code § 6-84-109(b)(2), concerning the reporting
3 of account withdrawals under the Arkansas Tax-Deferred Tuition Savings
4 Program Act, is amended to read as follows:

5 (2) The report shall be made at the time required by the rules
6 of the Internal Revenue Service as in effect on January 1, ~~2018~~ 2020, and
7 contain such information as is required by law.

8
9 SECTION 15. Arkansas Code § 6-84-111(a)(1), concerning funds exempt
10 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
11 amended to read as follows:

12 (a)(1) Except as otherwise indicated in this chapter, interest,
13 dividends, and capital gains from funds invested in the Arkansas ~~Tax-Deferred~~
14 ~~Tuition Savings Program~~ Brighter Future Plan or a tax-deferred tuition
15 savings program established by another state under 26 U.S.C. § 529, as in
16 effect on January 1, ~~2018~~ 2020, shall be exempt from Arkansas income taxes.

17
18 SECTION 16. Arkansas Code § 6-84-111(b)(1), concerning funds exempt
19 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
20 amended to read as follows:

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

25
26 SECTION 17. Arkansas Code § 6-84-111(b)(3), concerning funds exempt
27 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
28 amended to read as follows:

29 (3) Contributions to this ~~program~~ plan that have been deducted
30 from the taxpayer employee's adjusted gross income for prior tax years shall
31 be subject to recapture from the taxpayer employee if the taxpayer employee:

32 (A) Makes a subsequent nonqualified withdrawal from the
33 account; or

34 (B) Rolls the account over to a tax-deferred tuition
35 savings program established by another state or institution under 26 U.S.C. §
36 529, as in effect on January 1, ~~2018~~ 2020.

1
2 SECTION 18. Arkansas Code § 6-84-111(c)(1)(A), concerning funds exempt
3 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
4 amended to read as follows:

5 (c)(1)(A) For tax years beginning on or after January 1, 2017,
6 contributions to a tuition savings account established under this ~~program~~
7 plan or a tax-deferred tuition savings program established by another state
8 under 26 U.S.C. § 529, as it existed on January 1, 2017, may be deducted from
9 the taxpayer's adjusted gross income for the purpose of calculating Arkansas
10 income tax under § 26-51-403(b).

11
12 SECTION 19. Arkansas Code § 6-84-111(d)(1)(A), concerning funds exempt
13 from tax under the Arkansas Tax-Deferred Tuition Savings Program Act, is
14 amended to read as follows:

15 (d)(1)(A) For tax years beginning on or after January 1, 2018,
16 contributions to a tuition savings account established under the ~~program~~ plan
17 or a tax-deferred tuition savings program established by another state under
18 26 U.S.C. § 529, as it existed on January 1, 2018, may be deducted from the
19 taxpayer's adjusted gross income for the purpose of calculating Arkansas
20 income tax under § 26-51-403(b).

21
22 SECTION 20. Arkansas Code § 6-84-111(e) and (f), concerning
23 withdrawals from and earnings on contributions to the Arkansas Tax-Deferred
24 Tuition Savings Program Act, are amended to read as follows:

25 (e)(1)(A) For tax years beginning on and after January 1, 2021,
26 contributions to a tuition savings account established under the plan or a
27 tax-deferred tuition savings program established by another state under 26
28 U.S.C. § 529, as in effect on January 1, 2020, may be deducted from the
29 taxpayer's adjusted gross income for the purpose of calculating Arkansas
30 income tax under § 26-51-403(b).

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

35 (2)(A) The deductible contributions for a tuition savings
36 account established under this chapter shall not exceed five thousand dollars

1 (\$5,000) per taxpayer in any tax year.

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

6 (C) The deductible contributions for a tax-deferred
 7 tuition savings program established by another state under 26 U.S.C. § 529,
 8 as in effect on January 1, 2020, shall not exceed three thousand dollars
 9 (\$3,000) per taxpayer in any tax year.

10 (D) The deductible contributions for a tax-deferred
 11 tuition savings program established by another state under 26 U.S.C. § 529,
 12 as in effect on January 1, 2020, that are rolled over into a tuition savings
 13 account established under this chapter shall not exceed seven thousand five
 14 hundred dollars (\$7,500) per taxpayer in the tax year in which they were
 15 rolled.

16 (f)(1) Qualified withdrawals from a tuition savings account
 17 established under this ~~program plan~~ or a tax-deferred tuition savings program
 18 established by another state under 26 U.S.C. § 529, as in effect on January
 19 1, ~~2018~~ 2020, will be exempt from Arkansas income tax with respect to the
 20 designated beneficiary's income.

21 (2)(A) Nonqualified withdrawals from a tuition savings account
 22 established under this ~~program plan~~ or a tax-deferred tuition savings program
 23 established by another state under 26 U.S.C. § 529, as in effect on January
 24 1, ~~2018~~ 2020, will be subject to Arkansas income tax.

25 (B) The nonqualified withdrawal will be taxable to the
 26 party, account owner, or designated beneficiary who actually makes the
 27 withdrawal.

28 ~~(f)~~(g) Any earnings on the contribution that are included in the
 29 refund will be subject to Arkansas income tax if an account owner receives a
 30 refund of contributions to a tuition savings account established under this
 31 ~~program plan~~ or a tax-deferred tuition savings program established by another
 32 state under 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, because of
 33 either:

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

35 (2) A scholarship, allowance, or payment described in 26 U.S.C.
 36 § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, 2018, received by the

1 designated beneficiary.

2
3 SECTION 21. Arkansas Code § 6-84-112 is amended to read as follows:
4 6-84-112. Limitation on liability.

5 Neither the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter
6 Future Plan, the Section 529 Plan Review Committee and each of its members,
7 nor the state shall insure any account or guarantee any rate of return or any
8 interest rate on any contribution, nor shall they or any one of them be
9 liable for any loss incurred by any person as a result of participating in
10 the ~~program~~ plan.

11
12 SECTION 22. Arkansas Code § 6-84-113 is amended to read as follows:
13 6-84-113. Liberal construction.

14 This chapter shall be liberally construed to comply with the
15 requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

16
17 SECTION 23. Arkansas Code § 6-84-114(c), concerning the Aspiring
18 Scholars Matching Grant Program, is amended to read as follows:

19 (c) An Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future
20 Plan account shall be exempt for purposes of determining eligibility for
21 transitional employment assistance, Medicaid, and food stamps, provided that
22 the federal rules for these programs permit such an exemption.

23
24 SECTION 24. Arkansas Code § 19-4-1602(21), concerning authorized
25 deductions from the payrolls of state employees, is amended to read as
26 follows:

27 (21)(A) Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter
28 Future Plan under the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter
29 Future Plan Act, § 6-84-101 et seq., or a tax-deferred savings program
30 established by another state under 26 U.S.C. § 529, as it existed on January
31 1, 2007.

32 (B) The tax-deferred savings plan must be in existence at
33 the time the payroll deduction request is made.

34 (C) The state employee shall provide information on his or
35 her Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Plan
36 account to the Department of Finance and Administration so that the payroll

1 deduction can be credited to the appropriate account; and

2
 3 SECTION 25. Arkansas Code § 26-51-403(b)(17), concerning the
 4 deductions subtracted from a taxpayer's gross income to arrive at the
 5 taxpayer's adjusted gross income, is amended to read as follows:

6 (17) Deductions for contributions to the Arkansas ~~Tax-Deferred~~
 7 ~~Tuition Savings Program~~ Brighter Future Plan not to exceed five thousand
 8 dollars (\$5,000) per taxpayer under § 6-84-111(b).

9
 10 SECTION 26. Arkansas Code § 26-51-2509(a) and (b), concerning the
 11 check-off program for the Arkansas Tax-Deferred Tuition Savings Program, are
 12 amended to read as follows:

13 (a)(1) The Revenue Division of the Department of Finance and
 14 Administration shall include on the Arkansas individual income tax forms,
 15 including those forms on which a husband and wife file separately on the same
 16 form, a designation as follows:

17 "If you are entitled to a refund, check if you wish to designate [] \$25, [
 18] \$50, [] \$100, [] (write in amount) or [] all of your
 19 tax refund to an Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter
 20 Future Plan account. Your refund will be reduced by this amount."

21 (2) The Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter
 22 Future Plan account must already be in existence at the time the election in
 23 subdivision (a)(1) of this section is made, and the pertinent information
 24 regarding the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future
 25 Plan account must be provided to the Department of Finance and Administration
 26 so that the deposit can be correctly made.

27 (b) The Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future
 28 Plan check-off program on state income tax returns shall be effective
 29 beginning with the returns for the 2009 tax year and each subsequent tax
 30 year.