

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

As Engrossed: H3/2/21

A Bill

HOUSE BILL 1509

5 By: Representatives Brown, Barker, Bentley, Cavanaugh, Crawford, Dalby, C. Fite, M. Gray, Haak,
6 Lundstrum, J. Mayberry, McKenzie, Speaks, Vaught
7 By: Senators J. English, Irvin, B. Davis, Bledsoe
8

For An Act To Be Entitled

9
10 AN ACT CONCERNING THE ARKANSAS TAX-DEFERRED TUITION
11 SAVINGS PROGRAM; TO AMEND THE ARKANSAS TAX-DEFERRED
12 TUITION SAVINGS PROGRAM ACT; TO ADOPT RECENT CHANGES
13 CONTAINED IN THE INTERNAL REVENUE CODE RELATED TO THE
14 PROGRAM; TO CHANGE THE NAME OF THE PROGRAM; AND FOR
15 OTHER PURPOSES.
16
17

Subtitle

18
19 TO AMEND THE ARKANSAS TAX-DEFERRED
20 TUITION SAVINGS PROGRAM ACT; TO ADOPT
21 RECENT CHANGES CONTAINED IN THE INTERNAL
22 REVENUE CODE; AND TO CHANGE THE NAME OF
23 THE PROGRAM.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 6-84-101 is amended to read as follows:
29 6-84-101. Title.

30 This chapter shall be known and may be cited as the ~~“Arkansas Tax-~~
31 ~~Deferred Tuition Savings Program Act”~~ “Arkansas Brighter Future Plan Act”.
32

33 SECTION 2. Arkansas Code § 6-84-102 is amended to read as follows:
34 6-84-102. Purpose.

35 It is the intent and purpose of this chapter to create and establish
36 the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Plan



1 pursuant to 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, to be
2 administered by the Section 529 Plan Review Committee through the adoption of
3 rules for the administration of the ~~program~~ plan.

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

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

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

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

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

20 (6) "Contribution" means:

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

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

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

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

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

36 (12) "Person" means a person as defined in 26 U.S.C. § 529, as

1 in effect on January 1, ~~2018~~ 2020;

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

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

8 (15) “Qualified tuition program” means a qualified tuition
9 program as defined in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020;
10

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

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

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

19 (B) To the credit of another person as a designated
20 beneficiary if the transferee account was created under this chapter or under
21 another qualified tuition program maintained in accordance with 26 U.S.C. §
22 529, as in effect on January 1, ~~2018~~ 2020; or

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

27 (ii) Subdivision (17)(C)(i) of this section does not
28 apply to so much of a distribution which, when added to all other
29 contributions made to the ABLE account for the taxable year, exceeds the
30 limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1,
31 ~~2018~~ 2020.

32

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

36 (a) There is created the Arkansas ~~Tax-Deferred Tuition Savings Program~~

1 Brighter Future Plan Trust.

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

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

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

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

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

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

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

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

31

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

33 6-84-106. Investment direction.

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

1 ~~Program~~ Brighter Future Plan.

2

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

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

11

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

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

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

22

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

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

28

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

32 (b) At the direction of an account owner, all or a portion of an
33 account may be transferred to another account of which the designated
34 beneficiary is a member of the family of the designated beneficiary of the
35 transferee account if the transferee account was created by this chapter or
36 under another qualified tuition program maintained in accordance with 26

1 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

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

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

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

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

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

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

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

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

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

35 (B) Rolls the account over to a tax-deferred tuition
36 savings program established by another state or institution under 26 U.S.C. §

1 529, as in effect on January 1, ~~2018~~ 2020.

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

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

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

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

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

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

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

36 (2)(A) The deductible contributions for a tuition savings

1 account established under this chapter shall not exceed five thousand dollars
2 (\$5,000) per taxpayer in any tax year.

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

7 (C) The deductible contributions for a tax-deferred
8 tuition savings program established by another state under 26 U.S.C. § 529,
9 as in effect on January 1, 2020, shall not exceed three thousand dollars
10 (\$3,000) per taxpayer in any tax year.

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

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

22 (2)(A) Nonqualified withdrawals from a tuition savings account
23 established under this ~~program plan~~ or a tax-deferred tuition savings program
24 established by another state under 26 U.S.C. § 529, as in effect on January
25 1, ~~2018~~ 2020, will be subject to Arkansas income tax.

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

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

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

36 (2) A scholarship, allowance, or payment described in 26 U.S.C.

1 § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, 2018, received by the
2 designated beneficiary.

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

5 6-84-112. Limitation on liability.

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

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

14 6-84-113. Liberal construction.

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

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

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

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

28 (21)(A) Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter
29 Future Plan under the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter
30 Future Plan Act, § 6-84-101 et seq., or a tax-deferred savings program
31 established by another state under 26 U.S.C. § 529, as it existed on January
32 1, 2007.

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

35 (C) The state employee shall provide information on his or
36 her Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Plan

1 account to the Department of Finance and Administration so that the payroll
2 deduction can be credited to the appropriate account; and

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

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

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

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

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

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

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

32
33 /s/Brown
34
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36