

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

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

As Engrossed: H3/2/21 H4/19/21

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 Fund Plan
32 Act”.
33

34 SECTION 2. Arkansas Code § 6-84-102 is amended to read as follows:
35 6-84-102. Purpose.

36 It is the intent and purpose of this chapter to create and establish



1 the Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan
2 pursuant to 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020, to be
3 administered by the Section 529 Plan Review Committee through the adoption of
4 rules for the administration of the ~~program~~ plan.

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

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

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

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

16 (5) "Committee" means the Section 529 Plan Review Committee,
17 provided for in § 6-84-105, which shall oversee the administration of the
18 Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan and
19 ensure that the ~~program~~ plan complies with the provisions of this chapter and
20 acts in accordance with 26 U.S.C. § 529, as in effect on January 1, ~~2018~~
21 2020;

22 (6) "Contribution" means:

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

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

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

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

34
35 SECTION 5. Arkansas Code § 6-84-103(12)-(15), concerning the
36 definitions used under the Arkansas Tax-Deferred Tuition Savings Program Act,

1 are amended to read as follows:

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

4 (13) ~~"Program"~~ "Plan" means the Arkansas ~~Tax-Deferred Tuition~~
5 ~~Savings Program~~ Brighter Future Fund Plan established by this chapter;

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

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

12

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

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

19 (A) Into an account of the same person for the benefit of
20 the same designated beneficiary;

21 (B) To the credit of another person as a designated
22 beneficiary if the transferee account was created under this chapter or under
23 another qualified tuition program maintained in accordance with 26 U.S.C. §
24 529, as in effect on January 1, ~~2018~~ 2020; or

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

29 (ii) Subdivision (17)(C)(i) of this section does not
30 apply to so much of a distribution which, when added to all other
31 contributions made to the ABLE account for the taxable year, exceeds the
32 limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1,
33 ~~2018~~ 2020.

34

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

1 follows:

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

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

8 (b) The committee shall adopt such rules as it deems necessary and
9 proper to administer this chapter and to ensure the compliance of the
10 Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan with
11 26 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

12 (c) The committee shall have the following powers, duties, and
13 functions:

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

19 (2) To adopt rules for the general administration of the ~~program~~
20 plan;

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

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

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

33

34 SECTION 9. Arkansas Code § 6-84-106 is amended to read as follows:
35 6-84-106. Investment direction.

36 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2018~~

1 2020, no person shall have the right to direct the investment of any
2 contributions to or earnings from the Arkansas ~~Tax-Deferred Tuition Savings~~
3 ~~Program~~ Brighter Future Fund Plan.

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

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

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

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

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

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

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

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

34 (b) At the direction of an account owner, all or a portion of an
35 account may be transferred to another account of which the designated
36 beneficiary is a member of the family of the designated beneficiary of the

1 transferee account if the transferee account was created by this chapter or
2 under another qualified tuition program maintained in accordance with 26
3 U.S.C. § 529, as in effect on January 1, ~~2018~~ 2020.

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

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

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

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

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

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

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

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

35 (A) Makes a subsequent nonqualified withdrawal from the
36 account; or

1 (B) Rolls the account over to a tax-deferred tuition
2 savings program established by another state or institution under 26 U.S.C. §
3 529, as in effect on January 1, ~~2018~~ 2020.

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

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

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

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

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

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

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

1 another state or on another state's income taxes.

2 (2)(A) The deductible contributions for a tuition savings
3 account established under this chapter shall not exceed five thousand dollars
4 (\$5,000) per taxpayer in any tax year.

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

9 (C) The deductible contributions for a tax-deferred
10 tuition savings program established by another state under 26 U.S.C. § 529,
11 as in effect on January 1, 2020, shall not exceed three thousand dollars
12 (\$3,000) per taxpayer in any tax year.

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

19 (f)(1) Qualified withdrawals from a tuition savings account
20 established under this ~~program plan~~ or a tax-deferred tuition savings program
21 established by another state under 26 U.S.C. § 529, as in effect on January
22 1, ~~2018~~ 2020, will be exempt from Arkansas income tax with respect to the
23 designated beneficiary's income.

24 (2)(A) Nonqualified withdrawals from a tuition savings account
25 established under this ~~program plan~~ or a tax-deferred tuition savings program
26 established by another state under 26 U.S.C. § 529, as in effect on January
27 1, ~~2018~~ 2020, will be subject to Arkansas income tax.

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

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

1 (1) The death or disability of the designated beneficiary; or
2 (2) A scholarship, allowance, or payment described in 26 U.S.C.
3 § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, 2018, received by the
4 designated beneficiary.

5
6 SECTION 21. Arkansas Code § 6-84-112 is amended to read as follows:

7 6-84-112. Limitation on liability.

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

14
15 SECTION 22. Arkansas Code § 6-84-113 is amended to read as follows:

16 6-84-113. Liberal construction.

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

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

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

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

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

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

1 (C) The state employee shall provide information on his or
2 her Arkansas ~~Tax-Deferred Tuition Savings Program~~ Brighter Future Fund Plan
3 account to the Department of Finance and Administration so that the payroll
4 deduction can be credited to the appropriate account; and

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

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

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

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

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

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

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

34
35 /s/Brown