

1 State of Arkansas  
2 91st General Assembly  
3 Second Extraordinary Session, 2018  
4

# A Bill

Call Item 9  
HOUSE BILL 1008

5 By: Representative Gillam  
6 By: Senator Rapert  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS TAX-DEFERRED TUITION  
10 SAVINGS PROGRAM ACT; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO AMEND THE ARKANSAS TAX-DEFERRED  
14 TUITION SAVINGS PROGRAM ACT.  
15  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code §§ 6-84-102 and 6-84-103 are amended to read  
21 as follows:

22 6-84-102. Purpose.

23 It is the intent and purpose of this chapter to create and establish  
24 the Arkansas Tax-Deferred Tuition Savings Program pursuant to 26 U.S.C. §  
25 529, as in effect on January 1, ~~2017~~ 2018, to be administered by the Section  
26 529 Plan Review Committee through the adoption of rules and regulations for  
27 the administration of the program.  
28

29 6-84-103. Definitions.

30 As used in this chapter:

31 (1) "Account" means an account established in accordance with  
32 this chapter;

33 (2) "Account owner" means the person who, under this chapter or  
34 the rules promulgated by the Section 529 Plan Review Committee, is entitled  
35 to select or change the designated beneficiary of an account, to designate  
36 any person other than the designated beneficiary to whom funds may be paid



1 from the account, or to receive distributions from the account if no other  
2 person is designated;

3 (3) "Act" means the Arkansas Tax-Deferred Tuition Savings  
4 Program Act, § 6-84-101 et seq.;

5 (4)(A) "Arkansas Tax-Deferred Tuition Savings Program Trust" or  
6 "trust" means the trust created under § 6-84-104.

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

9 (5) "Committee" means the Section 529 Plan Review Committee,  
10 provided for in § 6-84-105, that shall oversee the administration of the  
11 Arkansas Tax-Deferred Tuition Savings Program and ensure that the program  
12 complies with the provisions of this chapter and acts in accordance with 26  
13 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018;

14 (6) "Contribution" means:

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

18 (B) That portion of any rollover amount treated as a  
19 contribution under 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018;

20 (7) "Contributor" means any person making a contribution to an  
21 account;

22 (8) "Designated beneficiary" means, except as provided in § 6-  
23 84-108, the individual designated at the time the account is opened as having  
24 the right to receive a qualified withdrawal for the payment of qualified  
25 higher education expenses or, if the designated beneficiary is replaced in  
26 accordance with § 6-84-108, the replacement;

27 (9) "Higher education institution" means an eligible education  
28 institution as defined in 26 U.S.C. § 135(c)(3), as in effect on January 1,  
29 ~~2017~~ 2018;

30 (10) "Member of the family" shall have the same meaning as is  
31 contained in 26 U.S.C. § 529~~(e)~~, as in effect on January 1, ~~2017~~ 2018;

32 (11) "Nonqualified withdrawal" means a withdrawal from an  
33 account that is not:

34 (A) A qualified withdrawal;

35 (B) A withdrawal made as the result of the death or  
36 disability of the designated beneficiary;

1 (C) A withdrawal made as the result of a scholarship,  
 2 allowance, or payment described in 26 U.S.C. § 135(d)(1)(B) or (d)(1)(C), as  
 3 in effect on January 1, ~~2017~~ 2018, received by the designated beneficiary but  
 4 only to the extent of the amount of the scholarship, allowance, or payment;  
 5 or

6 (D) A rollover or change in the designated beneficiary;

7 (12) "Person" means a person as defined in 26 U.S.C. § 529, as  
 8 in effect on January 1, ~~2017~~ 2018;

9 (13) "Program" means the Arkansas Tax-Deferred Tuition Savings  
 10 Program established by this chapter;

11 (14) "Qualified higher education expenses" means tuition and  
 12 other permitted expenses as set forth in 26 U.S.C. § 529~~(e)~~, as in effect on  
 13 January 1, ~~2017~~ 2018, for the enrollment or attendance of a designated  
 14 beneficiary ~~at a higher education institution~~;

15 (15) "Qualified tuition program" means a qualified tuition  
 16 program as defined in 26 U.S.C. § 529~~(b)~~, as in effect on January 1, ~~2017~~  
 17 2018;

18 (16) "Qualified withdrawal" means a withdrawal from an account  
 19 to pay the qualified higher education expenses of the designated beneficiary  
 20 but only if the withdrawal is made in accordance with the requirements of the  
 21 program; and

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

25 ~~(A) into~~ Into an account of the same person for the  
 26 benefit of the same designated beneficiary; ~~or~~

27 ~~(B) another~~ To the credit of another person as a  
 28 designated beneficiary if the transferee account was created under this  
 29 chapter or under another qualified tuition program maintained in accordance  
 30 with 26 U.S.C. § 529~~(e)~~, as in effect on January 1, ~~2017~~, 2018; or

31 (C)(i) Before January 1, 2026, into an ABLE account under  
 32 26 U.S.C. § 529A(e)(6), as in effect on January 1, 2018, of the designated  
 33 beneficiary or a member of the family of the designated beneficiary.

34 (ii) Subdivision (17)(C)(i) of this section does not  
 35 apply to so much of a distribution which, when added to all other  
 36 contributions made to the ABLE account for the taxable year, exceeds the

1 limitation under 26 U.S.C. § 529A(b)(2)(B)(i), as in effect on January 1,  
2 2018.

3  
4 SECTION 2. Arkansas Code §§ 6-84-105 and 6-84-106 are amended to read  
5 as follows:

6 6-84-105. Administration – Authority – Powers.

7 (a) This chapter shall be administered by the Section 529 Plan Review  
8 Committee, which shall be composed of:

9 (1) The Director of the Department of Higher Education;

10 (2) The Executive Director of the Arkansas Teacher Retirement  
11 System; and

12 (3) The Treasurer of State.

13 (b) The committee shall adopt such rules and regulations as it deems  
14 necessary and proper to administer this chapter and to ensure the compliance  
15 of the Arkansas Tax-Deferred Tuition Savings Program with 26 U.S.C. § 529, as  
16 in effect on January 1, ~~2017~~ 2018.

17 (c) The committee shall have the following powers, duties, and  
18 functions:

19 (1) To establish, develop, implement, and maintain the program  
20 in a manner consistent with the provisions of this chapter and 26 U.S.C. §  
21 529, as in effect on January 1, ~~2017~~ 2018, and to obtain the benefits  
22 provided by 26 U.S.C. § 529 for the program, account owners, and designated  
23 beneficiaries;

24 (2) To adopt rules and regulations for the general  
25 administration of the program;

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

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

36 (B) Contracts entered into by the committee may be for a

1 term of from one (1) to ten (10) years.

2 (d) The Treasurer of State shall provide office space, staff, and  
3 materials for the committee.

4 (e) A member of the committee may expend funds appropriated for the  
5 member of the committee to provide the following for the benefit of the  
6 Arkansas Tax-Deferred Tuition Savings Program:

- 7 (1) Office space;
- 8 (2) Staffing;
- 9 (3) Materials;
- 10 (4) Marketing;
- 11 (5) Education;
- 12 (6) Financial literacy programs; and
- 13 (7) Outreach measures.

14  
15 6-84-106. Investment direction.

16 Except as permitted in 26 U.S.C. § 529, as in effect on January 1, ~~2017~~  
17 2018, no person shall have the right to direct the investment of any  
18 contributions to or earnings from the Arkansas Tax-Deferred Tuition Savings  
19 Program.

20  
21 SECTION 3. Arkansas Code §§ 6-84-108 and 6-84-109 are amended to read  
22 as follows:

23 6-84-108. Naming of designated beneficiary and transfers of accounts.

24 (a) An account owner shall have the right to name the designated  
25 beneficiary of an account and at any time to change the designated  
26 beneficiary of an account to another individual who is a member of the family  
27 of the former designated beneficiary.

28 (b) At the direction of an account owner, all or a portion of an  
29 account may be transferred to another account of which the designated  
30 beneficiary is a member of the family of the designated beneficiary of the  
31 transferee account if the transferee account was created by this chapter or  
32 under another qualified tuition program maintained in accordance with 26  
33 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018.

34  
35 6-84-109. Account withdrawals.

36 (a) Withdrawal from an account may be made on thirty (30) days'

1 written notice by the account owner to the Section 529 Plan Review Committee  
2 or on shorter notice as the committee may by regulation provide.

3 (b)(1) An account withdrawal paid to or for the benefit of any person  
4 during any calendar year shall be reported to the person and to the Internal  
5 Revenue Service.

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, ~~2017~~ 2018, and  
8 contain such information as is required by law.

9  
10 SECTION 4. Arkansas Code § 6-84-111 is amended to read as follows:

11 6-84-111. Funds exempt from tax – Definitions.

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 or a tax-deferred tuition savings program established  
15 by another state under 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018,  
16 shall be exempt from Arkansas income taxes.

17 (2) For purposes of this section:

18 (A) “Taxpayer employee” means an employee of an employer  
19 with an account established under this chapter; and

20 (B) “Taxpayer employer” means a person that employs an  
21 individual with an account established under this chapter;

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

26 (2)(A) The deductible contributions shall not exceed five  
27 thousand dollars (\$5,000) per taxpayer employee in any tax year.

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

32 (C) A taxpayer employer may make a matching contribution  
33 to the account of a taxpayer employee with an account established under this  
34 chapter that does not exceed five hundred dollars (\$500) per contributing  
35 employee per year.

36 (3) Contributions to this program that have been deducted from

1 the taxpayer employee's adjusted gross income for prior tax years shall be  
2 subject to recapture from the taxpayer employee if the taxpayer employee:

3 (A) Makes a subsequent nonqualified withdrawal from the  
4 account; or

5 (B) Rolls the account over to a tax-deferred tuition  
6 savings program established by another state or institution under 26 U.S.C. §  
7 529, as in effect on January 1, ~~2017~~ 2018.

8 (4)(A) The contribution shall be recaptured by adding the amount  
9 previously deducted, not to exceed the amount of the nonqualified withdrawal  
10 or rollover, to the taxpayer employee's adjusted gross income for the tax  
11 year in which the nonqualified withdrawal or rollover occurred.

12 (B) The nonqualified withdrawal or rollover shall be  
13 taxable to the taxpayer employee, party, account owner, or designated  
14 beneficiary who actually makes the nonqualified withdrawal or rollover.

15 (c)(1)(A) For tax years beginning on or after January 1, 2017,  
16 contributions to a tuition savings account established under this program or  
17 a tax-deferred tuition savings program established by another state under 26  
18 U.S.C. § 529, as it existed on January 1, 2017, 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 (B) A taxpayer may not deduct from the taxpayer's adjusted  
22 gross income a contribution to a tax-deferred tuition savings program  
23 established by another state if the taxpayer deducted the contribution in  
24 another state or on another's state's income taxes.

25 (2)(A) The deductible contributions for a tuition savings  
26 account established under this chapter shall not exceed five thousand dollars  
27 (\$5,000) per taxpayer in any tax year.

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

32 (C) The deductible contributions for a tax-deferred  
33 tuition savings program established by another state under 26 U.S.C. § 529,  
34 as it existed on January 1, 2017, shall not exceed three thousand dollars  
35 (\$3,000) per taxpayer in any tax year.

36 (D) The deductible contributions for a tax-deferred

1 tuition savings program established by another state under 26 U.S.C. § 529,  
2 as it existed on January 1, 2017, that are rolled over into a tuition savings  
3 account established under this chapter shall not exceed seven thousand five  
4 hundred dollars (\$7,500) per taxpayer in the tax year in which they were  
5 rolled.

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

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

16 (2)(A) The deductible contributions for a tuition savings  
17 account established under this chapter shall not exceed five thousand dollars  
18 (\$5,000) per taxpayer in any tax year.

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

23 (C) The deductible contributions for a tax-deferred  
24 tuition savings program established by another state under 26 U.S.C. § 529,  
25 as it existed on January 1, 2018, shall not exceed three thousand dollars  
26 (\$3,000) per taxpayer in any tax year.

27 (D) The deductible contributions for a tax-deferred  
28 tuition savings program established by another state under 26 U.S.C. § 529,  
29 as it existed on January 1, 2018, that are rolled over into a tuition savings  
30 account established under this chapter shall not exceed seven thousand five  
31 hundred dollars (\$7,500) per taxpayer in the tax year in which they were  
32 rolled.

33 ~~(d)(1)~~ (e)(1) Qualified withdrawals from a tuition savings account  
34 established under this program or a tax-deferred tuition savings program  
35 established by another state under 26 U.S.C. § 529, as in effect on January  
36 1, 2017 2018, will be exempt from Arkansas income tax with respect to the



1 designated beneficiary's income.

2 (2)(A) Nonqualified withdrawals from a tuition savings account  
 3 established under this program or a tax-deferred tuition savings program  
 4 established by another state under 26 U.S.C. § 529, as in effect on January  
 5 1, ~~2017~~ 2018, will be subject to Arkansas income tax.

6 (B) The nonqualified withdrawal will be taxable to the  
 7 party, account owner, or designated beneficiary who actually makes the  
 8 withdrawal.

9 ~~(e)~~ (f) Any earnings on the contribution that are included in the  
 10 refund will be subject to Arkansas income tax if an account owner receives a  
 11 refund of contributions to a tuition savings account established under this  
 12 program or a tax-deferred tuition savings program established by another  
 13 state under 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018, because of  
 14 either:

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

16 (2) A scholarship, allowance, or payment described in 26 U.S.C.  
 17 § 135(d)(1)(B) or (d)(1)(C), as in effect on January 1, ~~2017~~ 2018, received  
 18 by the designated beneficiary.

19  
 20 SECTION 5. Arkansas Code § 6-84-113 is amended to read as follows:

21 6-84-113. Liberal construction.

22 This chapter shall be liberally construed to comply with the  
 23 requirements of 26 U.S.C. § 529, as in effect on January 1, ~~2017~~ 2018.

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 25 SECTION 6. EFFECTIVE DATE. This act is effective for tax years  
 26 beginning on or after January 1, 2018.

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 28  
 29 **APPROVED: 3/19/18**