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4

As Engrossed: S3/16/17

A Bill

SENATE BILL 746

5 *By: Senators B. Johnson, Hester*
6 *By: Representative Dotson*
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE PARENTAL CHOICE SCHOLARSHIP
10 PROGRAM; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO ESTABLISH THE PARENTAL CHOICE
15 SCHOLARSHIP PROGRAM.
16
17

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

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

22 *Subchapter 29 - Parental Choice Scholarship Program*
23

24 *6-15-2901. Title.*

25 *This subchapter shall be known and may be cited as the "Parental Choice*
26 *Scholarship Program".*
27

28 *6-15-2902. Definitions.*

29 *As used in this subchapter:*

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

33 *(2) "Eligible contribution" means a monetary contribution from*
34 *an eligible taxpayer or corporation, subject to the restrictions provided in*
35 *this subchapter, to an eligible nonprofit organization;*

36 *(3) "Eligible nonprofit organization" means a charitable*



1 organization that:

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

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

7 (C) Is certified by the Department of Finance and
8 Administration under § 6-15-2903;

9 (D) Complies with the operational requirements under § 6-
10 15-2904; and

11 (E) Receives contributions to fund and administer
12 education savings accounts;

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

16 (5) "Eligible taxpayer" means a business or individual,
17 including without limitation a corporation, partnership, limited liability
18 company, and sole proprietorship;

19 (6) "National school lunch student" means a student who is
20 eligible for free or reduced-price meals under the National School Lunch Act,
21 42 U.S.C. § 1751 et seq., unless the student is eligible for free or reduced-
22 price meals solely because the public school district is participating in the
23 special assistance certification and reimbursement alternative implemented
24 under 42 U.S.C. § 1759a;

25 (7) "Operator" means:

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

29 (B) An owner or other person with equivalent decision-
30 making authority over a provider of educational services that receives
31 payment under § 6-15-2907 from an education savings account; and

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

34
35 6-15-2903. Application to become an eligible nonprofit organization.

36 (a) An organization that seeks to become an eligible nonprofit

1 organization shall apply to the Department of Finance and Administration for
2 initial certification or renewal of certification as an eligible nonprofit
3 organization by March 1 before the academic year for which the organization
4 intends to fund education savings accounts.

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

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

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

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

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

14 (ii) Organizational chart;

15 (D) A description of the methodology the organization will
16 use to verify whether a student is eligible to establish an education savings
17 account;

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

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

22 (G) A description of how the organization will comply with
23 the operational requirements under § 6-15-2904.

24 (2) The certification of an eligible nonprofit organization
25 shall renew automatically unless the Department of Finance and Administration
26 revokes the certification of the eligible nonprofit organization under § 6-
27 15-2904.

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

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

35 (d) The Department of Finance and Administration and the Department of
36 Education shall maintain a public registry of currently certified eligible

1 nonprofit organizations on the Department of Finance and Administration
2 website and the Department of Education website.

3
4 6-15-2904. Operation of an eligible nonprofit organization.

5 (a) An eligible nonprofit organization:

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

9 (2)(A) Shall allocate one hundred percent (100%) of the eligible
10 nonprofit organization's annual revenue from eligible contributions under §
11 26-51-515 for funding education savings accounts.

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

15 (i) Administrative expenses of the eligible
16 nonprofit organization; and

17 (ii) Funding education savings accounts.

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

20 (3) Shall not have an operator or employee who owns, operates,
21 or is employed by an entity that receives a payment for services from an
22 education savings account under § 6-15-2907;

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

25 (5) Shall not allow donors to designate their eligible
26 contributions to specific student beneficiaries or any specific expense under
27 § 6-15-2907(a) as a condition of an eligible contribution to the eligible
28 nonprofit organization;

29 (6) Shall maintain separate accounts for education savings
30 account funds and operating funds;

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

35 (B) A transfer shall be limited to the greater of five
36 hundred thousand dollars (\$500,000) or twenty percent (20%) of the total

1 eligible contributions received by the eligible nonprofit organization making
2 the transfer.

3 (C) All transferred funds shall be deposited by the
4 receiving eligible nonprofit organization into its account for education
5 savings accounts.

6 (D) All transferred funds received by any eligible
7 nonprofit organization shall be separately disclosed in the annual financial
8 audit under § 6-15-2909;

9 (8)(A) Shall:

10 (i) Prepare and submit quarterly reports to the
11 Department of Finance and Administration;

12 (ii) Submit an annual report to the Department of
13 Education containing the information under § 6-15-2907(d); and

14 (iii) Submit in a timely manner any information
15 requested by the Department of Education relating to the education savings
16 accounts established by the eligible nonprofit organization.

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

20 (9)(A) Establish a process by which individuals may notify the
21 eligible nonprofit organization of any violation by a parent, provider of
22 educational services that receives payment from an education savings account
23 under § 6-15-2907, or public school district of state laws relating to the
24 establishment and use of education savings accounts.

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

28 (b)(1) The Department of Finance and Administration shall send written
29 notice to an eligible nonprofit organization if the Department of Finance and
30 Administration determines that the eligible nonprofit organization has
31 violated any provision of this subchapter.

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

36 (B) If the eligible nonprofit organization fails or

1 refuses to comply after sixty (60) days, the Department of Finance and
2 Administration may revoke the certification of the eligible nonprofit
3 organization.

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

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

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

14 (2) If the eligible nonprofit organization received any
15 contributions for the purpose of funding education savings accounts after the
16 date of notice of the revocation of its certification, the eligible nonprofit
17 organization shall refund the contributions.

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

23 (2) An eligible nonprofit organization that transfers funds to
24 other eligible nonprofit organizations under subdivision (e)(1) of this
25 section shall notify the Department of Finance and Administration of the
26 amount of funds transferred and the eligible nonprofit organizations that
27 received the transfers.

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

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

36 (g) To ensure compliance with § 6-15-2907, an eligible nonprofit

1 organization shall conduct:

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

3 (2) Random audits of some education savings accounts throughout
4 the year.

5
6 6-15-2905. Establishment of education savings accounts – Payments.

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

9 (b)(1)(A) An eligible nonprofit organization shall make available for
10 each eligible student an equivalent of the foundation funding amount under §
11 6-20-2305(a)(2) for each academic year plus any amount carried over from
12 previous academic years under § 6-15-2907(c).

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

17 (2) An eligible nonprofit organization shall maintain:

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

21 (B) Separate accounts for all other funds of the eligible
22 nonprofit organization, including without limitation funds for administrative
23 expenses.

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

26 (1) Parent of the eligible student; or

27 (2) Eligible student.

28 (d) An eligible nonprofit organization:

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

30 (A) Direct payment from an education savings account to
31 education service providers or other entities for expenses under § 6-15-2907;
32 and

33 (B) Reimbursement to a parent via check, electronic funds
34 transfer, or other payment deemed to be commercially viable or cost-effective
35 upon the production by the parent of a receipt for expenses under § 6-15-
36 2907; and

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

3
4 6-15-2906. Application for an education savings account.

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

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

9 (A) Verifying that the student on whose behalf the parent
10 is applying is an eligible student who satisfies the eligible nonprofit
11 organization's criteria for approving an application for an education savings
12 account; and

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

15 (2)(A) The eligible nonprofit organization shall approve
16 applications for education savings accounts in the following order of
17 priority:

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

20 (ii) Second, to the sibling or siblings of an
21 eligible student who has an education savings account established on behalf
22 of the eligible student under this subchapter if the sibling or siblings meet
23 the criteria of an eligible student;

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

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

31 (v) Fifth, to eligible students who are dependents
32 of members of the United States Armed Forces or National Guard who are
33 deployed in this state if the dependents are eligible to enroll in a public
34 school in this state in any level from kindergarten through grade twelve (K-
35 12);

36 (vi) Sixth, to all other eligible students retained

1 on the previous academic year's wait list; and

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

3 (B)(i) The eligible nonprofit organization shall approve
4 under subdivision (b)(2)(A) of this section a minimum of two (2) applications
5 from eligible students who attended a public school during the prior academic
6 year for every one (1) application the eligible nonprofit organization
7 approves from eligible students who attended a nonpublic school during the
8 prior academic year for the following applicants:

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

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

15 (ii) For the purposes of subdivision (b)(2)(B)(i) of
16 this section, the following shall be considered eligible students who
17 attended a public school during the prior academic year:

18 (a) Eligible students who are entering
19 kindergarten for the first time;

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

22 (c) Eligible students who are new residents of
23 a public school district and are eligible to enroll in that public school
24 district.

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

27 (i) An income verification form used by the
28 Department of Education or a similar form to ascertain if an eligible student
29 would meet the qualifications as a national school lunch student if the
30 eligible student were enrolled in a public school district; and

31 (ii) A form to ascertain:

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

34 (b) The public school district or open-
35 enrollment public charter school where the eligible student attended public
36 school.

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

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

7 (4)(A)(i)(a) An eligible nonprofit organization may approve for
8 an academic year the applications of a maximum of one percent (1%) of
9 eligible students who were enrolled in a particular public school district
10 during the previous academic year as of October 1 of the immediately
11 preceding academic year.

12 (b) Annually by December 15, the Department of
13 Education shall report to each eligible nonprofit organization the number of
14 students who were enrolled in each public school district during the previous
15 academic year as of October 1 of the immediately preceding academic year.

16 (ii) Applications that are approved from eligible
17 students who reside in a particular public school district but who attended a
18 nonpublic school during the previous academic year do not count toward the
19 one percent (1%) maximum of eligible students who attended that public school
20 district under subdivision (b)(4)(A)(i) of this section.

21 (B)(i) An eligible nonprofit organization shall report to
22 a public school district by June 1 the number of applications of eligible
23 students the eligible nonprofit organization approved from that public school
24 district.

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

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

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

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

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

6 (c) As part of the application process, a parent shall:

7 (1) Enter into an agreement with the eligible nonprofit
8 organization:

9 (A) To use the funds in the education savings account only
10 for the expenses under § 6-15-2907;

11 (B)(i) Not to enroll the eligible student in a public
12 school.

13 (ii) A parent who uses an education savings account
14 for contracted services from a public school district under § 6-15-2907(a)(7)
15 is not in violation of subdivision (c)(1)(B)(i) of this section;

16 (C) Not to accept a Succeed Scholarship under § 6-41-801
17 et seq. or any other state funds under a program intended to provide funding
18 for tuition in a nonpublic school; and

19 (D) To provide to the eligible student an organized,
20 appropriate educational program with measurable annual goals; and

21 (2)(A) Sign a waiver on a form developed by the Department of
22 Education that releases:

23 (i) The State of Arkansas from any legal obligation
24 to provide services or education to the eligible student, except as may be
25 required by federal law; and

26 (ii) The student's resident school district from any
27 legal obligation to provide services or education to the eligible student
28 while the student is not enrolled in the student's resident school district,
29 except as may be required by federal law.

30 (B) The waiver under subdivision (c)(2)(A) of this section
31 shall have the same effect as a parental placement under 20 U.S.C. §
32 1412(10)(a) of the Individuals with Disabilities Education Act, as it existed
33 on January 1, 2017.

34 (d) Upon application by the parent, the eligible nonprofit
35 organization shall annually renew an eligible student's education savings
36 account if funds are available.

1
2 6-15-2907. Education savings account uses – Testing – Reporting.

3 (a) A parent shall use the funds in the education savings account
4 established on behalf of an eligible student only for the following expenses
5 of the eligible student:

6 (1) Tuition or fees for a:

7 (A) Nonpublic school in this state; or

8 (B) Nonpublic online learning program or course;

9 (2) Textbooks required by a nonpublic school;

10 (3) Tutoring services provided by a:

11 (A) Teacher licensed by the State Board of Education;

12 (B) Person qualified under § 6-15-1004 and rules of the
13 state board as a substitute teacher in this state;

14 (C) Person who has experience teaching at an institution
15 of higher education; or

16 (D) Person or entity accredited as a tutor or a tutoring
17 entity by a state, regional, or national accrediting organization;

18 (4) Curriculum or other instructional materials;

19 (5) Fees for:

20 (A) Nationally standardized assessments, including without
21 limitation the state-mandated assessments required by the state board;

22 (B) Advanced Placement examinations;

23 (C) College placement examinations, including without
24 limitation the ACT or the SAT;

25 (D) Industry certification examinations; and

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

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

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

32 (B) A public school district that contracts under
33 subdivision (a)(7)(A) of this section to allow an eligible student to enroll
34 in an academic course shall charge no more than an amount equal to one-sixth
35 (1/6) of the state foundation funding amount for each academic course in
36 which an eligible student is enrolled;

1 (8) Contributions to a college savings account, including
2 without limitation:

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

5 (B) A Coverdell education savings account under 26 U.S.C.
6 § 530;

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

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

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

12 (A) Applied behavior analysis services as defined under §
13 23-99-418;

14 (B) Speech-language pathology services as defined under §
15 17-100-103;

16 (C) Occupational therapy services as defined under § 17-
17 88-102;

18 (D) Physical therapy services as defined under § 17-93-
19 102;

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

21 (F) Other related services determined by the Department of
22 Education;

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

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

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

34 (B) Funds used to purchase the items in subdivision
35 (a)(13)(A) of this section shall not exceed ten percent (10%) per academic
36 year of the education savings account funds made available for an eligible

1 student for that academic year.

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

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

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

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

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

15 (A)(i) Each academic year the eligible student takes
16 either the state-mandated assessments or nationally recognized norm-
17 referenced tests that measure learning gains in math and language arts.

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

22 (B) The results of assessments or tests taken by the
23 eligible student under subdivision (d)(1)(A) of this section are reported to
24 the eligible nonprofit organization;

25 (C) The eligible student's information is reported in a
26 way that would allow the eligible nonprofit organization to report data by
27 grade level, gender, and race; and

28 (D) The eligible nonprofit organization is informed of the
29 eligible student's graduation from high school.

30 (2) The eligible nonprofit organization shall:

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

32 (B) Collect results of the assessments;

33 (C)(i) Provide to the public via the eligible nonprofit
34 organization's website after the third year of assessment and graduation
35 related data collection:

36 (a) The results of the assessments;

1 (b) Any associated learning gains; and

2 (c) Graduation rates.

3 (ii) The information shall be reported by each
4 eligible student's:

5 (a) Grade level;

6 (b) Gender;

7 (c) Number of years receiving an education
8 savings account under this subchapter; and

9 (d) Race; and

10 (D) Administer an annual parental satisfaction survey that
11 asks parents of eligible students receiving education savings accounts to
12 express:

13 (i) Their satisfaction with the education savings
14 accounts; and

15 (ii) Their opinions on other topics, items, or
16 issues that the eligible nonprofit organization finds would assist in
17 determining the effectiveness of education savings accounts and the number of
18 years their eligible student has received an education savings account.

19
20 6-15-2908. Duration of the program – Return of funds.

21 (a) If funds are available, an eligible nonprofit organization shall
22 continue making available education savings account funds for an eligible
23 student under § 6-15-2905 until:

24 (1) The parent does not apply under § 6-15-2906(d) to renew the
25 education savings account;

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

28 (3) The parent of the eligible student fails to comply with the
29 agreement under § 6-15-2906(c);

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

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

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

36 (iii) An eligible student who enrolls in a public

1 school under subdivision (a)(4)(A) of this section may continue to use any
2 accumulated funds in the education savings account for expenses under § 6-15-
3 2907 until the eligible student reaches twenty-two (22) years of age, at
4 which time the education savings account shall be closed as provided under
5 subsection (c) of this section.

6 (iv) If the parent notifies the eligible nonprofit
7 organization that the student is no longer enrolled in a public school and
8 the student continues to meet the eligibility requirements under this
9 subchapter at the end of the academic year in which the student enrolls in a
10 public school, the eligible nonprofit organization shall resume making new
11 education savings account funds available under § 6-15-2905 for that student.

12 (v) If the parent does not notify the eligible
13 nonprofit organization under subdivision (a)(4)(B)(iv) of this section that
14 the student is no longer enrolled in a public school at the end of the
15 academic year in which the student enrolled in a public school, the student
16 must apply for an education savings account as a new applicant and be
17 approved by the eligible nonprofit organization in order to resume receiving
18 funds for the student's education savings account;

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

20 (6) The Commissioner of Education suspends or revokes the use of
21 an education savings account upon a finding of fraud or abuse, including
22 without limitation accepting a refund or rebate in violation of § 6-15-
23 2907(b).

24 (b) Any funds remaining in an education savings account after an
25 eligible student graduates from high school may continue to be used for the
26 purposes under § 6-15-2907(a)(9) and (10) until the student reaches twenty-
27 two (22) years of age, at which time the education savings account shall be
28 closed.

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

32
33 6-15-2909. Audit.

34 (a) By October 1 of each year, an eligible nonprofit organization
35 shall have an annual financial audit of its accounts and records conducted in
36 accordance with generally accepted auditing standards by an independent

1 certified public accountant licensed in this state.

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

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

7
8 6-15-2910. Autonomy of nonpublic schools and providers of educational
9 services.

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

14 (b) The curriculum and education plan for a student attending a
15 nonpublic school or receiving educational services from a provider of
16 educational services under this subchapter is not subject to the regulatory
17 authority of the State Board of Education.

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

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

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

26
27 6-15-2911. Rules.

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

30
31 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5, is
32 amended to add an additional section to read as follows:

33 26-51-515. Tax credit for contributions for education savings
34 accounts.

35 (a) A state income tax credit is allowed against the taxes imposed by
36 the Income Tax Act of 1929, § 26-51-101 et seq., for sixty-five percent (65%)

1 of an eligible contribution approved by the Department of Finance and
2 Administration under subsection (b) of this section made by the taxpayer for
3 a tax year to an eligible nonprofit organization that is certified under the
4 Parental Choice Scholarship Program, § 6-15-2901 et seq., at the time of the
5 contribution.

6 (b)(1)(A) Before making the contribution to an eligible nonprofit
7 organization under subsection (a) of this section, a taxpayer shall notify
8 the eligible nonprofit organization of the total amount of contributions that
9 the taxpayer intends to make to the eligible nonprofit organization.

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

14 (C) The Department of Finance and Administration shall
15 certify or deny the requested amount within twenty (20) days after receiving
16 the request from the eligible nonprofit organization.

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

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

24 (F)(i) If the eligible nonprofit organization receives the
25 certified contribution from the taxpayer within the required twenty (20)
26 days, the eligible nonprofit organization shall immediately notify the
27 Department of Finance and Administration so the Department of Finance and
28 Administration may record the tax credit on the taxpayer's account as of July
29 1.

30 (ii) If the eligible nonprofit organization does not
31 receive the certified contribution from the taxpayer within the required
32 twenty (20) days, the eligible nonprofit organization shall immediately
33 notify the Department of Finance and Administration.

34 (G) After the Department of Finance and Administration
35 receives notice that the eligible nonprofit organization did not receive the
36 certified contribution:

1 (i) The certification becomes void; and

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

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

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

12 (ii) If a certified contribution is not received and
13 becomes void under subdivision (b)(1)(G) of this section, the Department of
14 Finance and Administration shall certify a contribution that was denied under
15 subdivision (b)(2)(B)(i) of this section on a first come, first served basis.

16 (C) An eligible nonprofit organization shall report to the
17 Department of Finance and Administration by November 1 the amount of the
18 certified contributions under subdivision (b)(1) of this section received by
19 the eligible nonprofit organization being used to fund education savings
20 accounts for that academic year.

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

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

27 (ii) Whose contributions were used to fund education
28 savings accounts.

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

33 (C) An eligible nonprofit organization shall notify the
34 Department of Finance and Administration of the taxpayers who meet the
35 requirements under subdivisions (b)(3)(A)(i) and (ii) of this section before
36 the Department of Finance and Administration begins certifying contributions

1 for fiscal year 2019.

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

6 (d) In fiscal years 2019, 2020, and 2021, the total amount of state
7 income tax credits made under this section shall equal the amount approved by
8 the Department of Finance and Administration under subdivision (b)(1) of this
9 section, not to exceed three million dollars (\$3,000,000).

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

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

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

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

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

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

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

36 (j)(1) An eligible taxpayer may rescind all or part of the eligible

1 taxpayer's allocated state income tax credit under this section.

2 (2) The amount rescinded shall become available for purposes of
3 the cap for the state fiscal year under this section to an eligible taxpayer
4 as approved by the Department of Finance and Administration if the eligible
5 taxpayer receives notice from the Department of Finance and Administration
6 that the rescission has been accepted by the Department of Finance and
7 Administration and the eligible taxpayer has not previously rescinded any or
8 all of the eligible taxpayer's allocated state income tax credit under this
9 section more than one (1) time in the previous three (3) tax years.

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

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

17 (2) The Department of Finance and Administration and the
18 Department of Education shall develop a cooperative agreement to assist in
19 the administration of this section.

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

24
25 SECTION 3. DO NOT CODIFY. This act shall be implemented as a four-
26 year pilot program beginning with the 2018-2019 school year.

27
28 /s/B. Johnson
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