

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

1 State of Arkansas *As Engrossed: S3/16/17 S3/20/17*

2 91st General Assembly

# A Bill

3 Regular Session, 2017

SENATE BILL 746

4

5 By: Senators B. Johnson, Hester, *J. Hendren*

6 By: Representatives Dotson, *Bragg*

7

8

## For An Act To Be Entitled

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

11

12

13

## Subtitle

14

TO ESTABLISH THE PARENTAL CHOICE *PILOT*  
15 PROGRAM.

16

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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 Program

23

24

#### 6-15-2901. Title.

25

This subchapter shall be known and may be cited as the "Parental Choice  
26 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 comply with the antidiscrimination provisions of 42  
7 U.S.C. § 1981 in approving an application for an education savings account;

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

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

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

16 (ii) Funding education savings accounts.

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

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

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

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

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

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

34 (B) A transfer shall be limited to the greater of five  
35 hundred thousand dollars (\$500,000) or twenty percent (20%) of the total  
36 eligible contributions received by the eligible nonprofit organization making

1 the transfer.

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

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

8 (8)(A) Shall:

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

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

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

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

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

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

27 (10) Shall not charge:

28 (A) An application fee; or

29 (B) Any other fee for administering the education savings  
30 accounts.

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

35 (2)(A) The eligible nonprofit organization that receives notice  
36 under subdivision (b)(1) of this section has sixty (60) days to correct the

1 violation identified by the Department of Finance and Administration in the  
2 notice.

3 (B) If the eligible nonprofit organization fails or  
4 refuses to comply after sixty (60) days, the Department of Finance and  
5 Administration may revoke the certification of the eligible nonprofit  
6 organization.

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

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

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

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

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

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

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

35 (2) An eligible nonprofit organization that receives a transfer  
36 of funds under subdivision (f)(1) of this section shall operate the education

1 savings accounts established by the eligible nonprofit organization that  
2 transferred the funds, if funds are available.

3 (g) To ensure compliance with § 6-15-2907, an eligible nonprofit  
4 organization shall conduct:

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

6 (2) Random audits of some education savings accounts throughout  
7 the year.

8  
9 6-15-2905. Establishment of education savings accounts – Payments.

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

12 (b)(1)(A) An eligible nonprofit organization shall make available:

13 (i) For each eligible student enrolled full-time in  
14 a nonpublic school in this state in which virtual technology is not the  
15 primary method of delivering instruction, an equivalent of the foundation  
16 funding amount under § 6-20-2305(a)(2) for each academic year plus any amount  
17 carried over from previous academic years under § 6-15-2907(c); and

18 (ii)(a) For each eligible student who does not meet  
19 the requirements of subdivision (b)(1)(A)(i) of this section, an equivalent  
20 of one-third (1/3) of the foundation funding amount under § 6-20-2305(a)(2)  
21 for each academic year plus any amount carried over from previous academic  
22 years under § 6-15-2907(c).

23 (b) In addition to the amount under  
24 subdivision (b)(1)(A)(ii)(a) of this section, an eligible nonprofit  
25 organization shall make available for an eligible student who contracts with  
26 a public school district under § 6-15-2907(a)(7) to enroll in an academic  
27 course one-sixth of the foundation funding amount under § 6-20-2305(a)(2) for  
28 each academic course in which the eligible student enrolls.

29 (c) An eligible nonprofit organization shall  
30 not make available to an eligible student under this subdivision

31 (b)(1)(A)(ii) an aggregate amount of new funds for an academic year that  
32 exceeds the foundation funding amount under § 6-20-2305(a)(2).

33 (B) Before making available the funds under subdivision  
34 (b)(1)(A) of this section, the eligible nonprofit organization shall verify  
35 that the eligible student meets the requirements under subdivision (b)(1)(A)  
36 of this section for the amount of funding to be made available.

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

5 (2) An eligible nonprofit organization shall maintain:

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

9 (B) Separate accounts for all other funds of the eligible  
10 nonprofit organization, including without limitation funds for administrative  
11 expenses.

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

14 (1) Parent of the eligible student; or

15 (2) Eligible student.

16 (d) An eligible nonprofit organization:

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

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

21 (B) Reimbursement to a parent via check, electronic funds  
22 transfer, or other payment deemed to be commercially viable or cost-effective  
23 upon the production by the parent of a receipt for expenses under § 6-15-  
24 2907; and

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

27  
28 6-15-2906. Application for an education savings account.

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

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

33 (A) Verifying that the student on whose behalf the parent  
34 is applying is an eligible student who satisfies the eligible nonprofit  
35 organization's criteria for approving an application for an education savings  
36 account; and



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

3 (2)(A) The eligible nonprofit organization shall approve  
4 applications for education savings accounts in the following order of  
5 priority:

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

8 (ii) Second, to the sibling or siblings of an  
9 eligible student who has an education savings account established on behalf  
10 of the eligible student under this subchapter if the sibling or siblings meet  
11 the criteria of an eligible student;

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

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

19 (v) Fifth, to eligible students who are dependents  
20 of members of the United States Armed Forces or National Guard who are  
21 deployed in this state if the dependents are eligible to enroll in a public  
22 school in this state in any level from kindergarten through grade twelve (K-  
23 12);

24 (vi) Sixth, to all other eligible students retained  
25 on the previous academic year's wait list; and

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

27 (B)(i) The eligible nonprofit organization shall approve  
28 under subdivision (b)(2)(A) of this section a minimum of two (2) applications  
29 from eligible students who attended a public school during the prior academic  
30 year for every one (1) application the eligible nonprofit organization  
31 approves from eligible students who attended a nonpublic school during the  
32 prior academic year for the following applicants:

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

35 (b) For all academic years subsequent to the  
36 first year education savings accounts are established under this subchapter,

1 applicants who did not receive funding in an education savings account during  
2 the previous academic year.

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

6 (a) Eligible students who are entering  
7 kindergarten for the first time;

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

10 (c) Eligible students who are new residents of  
11 a public school district and are eligible to enroll in that public school  
12 district.

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

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

19 (ii) A form to ascertain:

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

22 (b) The public school district or open-  
23 enrollment public charter school where the eligible student attended public  
24 school.

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

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

31 (4)(A)(i)(a) A maximum of one percent (1%) of eligible students  
32 who were enrolled in a particular public school district as of October 1 of  
33 the immediately preceding academic year may be approved per academic year for  
34 an education savings account under this subchapter.

35 (b) Before approving an application for an  
36 eligible student who was enrolled in a public school district during the

1 previous academic year, the eligible nonprofit organization shall obtain  
2 certification from the Department of Education that approving the application  
3 will not result in a violation of subdivision (b)(4)(A)(i)(a) of this  
4 section.

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

10 (B)(i) An eligible nonprofit organization shall report to  
11 a public school district by June 1 the number of applications of eligible  
12 students the eligible nonprofit organization approved from that public school  
13 district.

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

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

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

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

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

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

32 (1) Enter into an agreement with the eligible nonprofit  
33 organization:

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

36 (B)(i) Not to enroll the eligible student in a public

1 school.

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

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

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

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

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

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

19 (B) The waiver under subdivision (c)(2)(A) of this section  
20 shall have the same effect as a parental placement under 20 U.S.C. §  
21 1412(10)(a) of the Individuals with Disabilities Education Act, as it existed  
22 on January 1, 2017.

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

26  
27 6-15-2907. Education savings account uses – Testing – Reporting.

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

31 (1) Tuition or fees for a:

32 (A) Nonpublic school in this state; or

33 (B) Nonpublic online learning program or course;

34 (2) Textbooks required by a nonpublic school;

35 (3) Tutoring services provided by a:

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

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

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

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

7 (4) Curriculum or other instructional materials;

8 (5) Fees for:

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

11 (B) Advanced Placement examinations;

12 (C) College placement examinations, including without  
13 limitation the ACT or the SAT;

14 (D) Industry certification examinations; and

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

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

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

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

26 (8) Tuition and fees at an institution of higher education for  
27 academic courses in which concurrent credit is awarded by a public or  
28 nonpublic school under subdivision (a)(1) or subdivision (a)(7) of this  
29 section;

30 (9) Textbooks and other materials related to concurrent credit  
31 courses under subdivision (a)(8) of this section;

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

34 (A) Applied behavior analysis services as defined under §  
35 23-99-418;

36 (B) Speech-language pathology services as defined under §

1 17-100-103;

2 (C) Occupational therapy services as defined under § 17-

3 88-102;

4 (D) Physical therapy services as defined under § 17-93-

5 102;

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

7 (F) Other related services determined by the Department of

8 Education;

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

13 (B) Transportation expenses under subdivision (a)(11)(A)  
14 of this section shall be for mileage reimbursement at the reimbursement rate  
15 prescribed by the Department of Finance and Administration for state  
16 employees for that year; and

17 (12)(A) Uniforms purchased for a nonpublic school and costs of  
18 computer hardware and software and other technological devices necessary for  
19 the education of the eligible student.

20 (B) Funds used to purchase the items in subdivision  
21 (a)(12)(A) of this section shall not exceed ten percent (10%) per academic  
22 year of the education savings account funds made available for an eligible  
23 student for that academic year.

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

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

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

32 (2)(A) The aggregate amount of funds that may be carried over to  
33 the next academic year under subdivision (c)(1) of this section shall not  
34 exceed the amount of new funds the eligible student received in the previous  
35 academic year.

36 (B) Any unused funds not carried over to the next academic

1 year under subdivision (c)(1) of this section shall be returned to the  
2 eligible nonprofit organization that contributed funds to the education  
3 savings account.

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

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

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

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

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

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

20 (2) The eligible nonprofit organization shall:

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

22 (B) Collect results of the assessments;

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

26 (a) The results of the assessments;

27 (b) Any associated learning gains; and

28 (c) Graduation rates.

29 (ii) The information shall be reported by each  
30 eligible student's:

31 (a) Grade level;

32 (b) Gender;

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

35 (d) Race; and

36 (D) Administer an annual parental satisfaction survey that

1 asks parents of eligible students receiving education savings accounts to  
2 express:

3 (i) Their satisfaction with the education savings  
4 accounts; and

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

9 (e) A nonpublic school or a provider of educational services receiving  
10 payments under this subchapter shall comply with the antidiscrimination  
11 provisions of 42 U.S.C. § 1981.

12  
13 6-15-2908. Duration of the program – Return of funds.

14 (a) An eligible nonprofit organization shall close an education  
15 savings account and cease making funds available for an eligible student on  
16 the earlier of the date that:

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

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

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

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

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

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

29 (iii) An eligible student who enrolls in a public  
30 school under subdivision (a)(4)(A) of this section may continue to use any  
31 accumulated funds in the education savings account for expenses under § 6-15-  
32 2907 until the eligible student reaches twenty-two (22) years of age, at  
33 which time the education savings account shall be closed as provided under  
34 subsection (c) of this section.

35 (iv) If the parent notifies the eligible nonprofit  
36 organization that the student is no longer enrolled in a public school and



1 the student continues to meet the eligibility requirements under this  
2 subchapter at the end of the academic year in which the student enrolls in a  
3 public school, the eligible nonprofit organization shall resume making new  
4 education savings account funds available under § 6-15-2905 for that student.

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

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

13 (6) The Commissioner of Education suspends or revokes the use of  
14 an education savings account upon a finding of fraud or abuse, including  
15 without limitation accepting a refund or rebate in violation of § 6-15-  
16 2907(b).

17 (b) If an education savings account is closed, any remaining funds  
18 shall be returned to the eligible nonprofit organization that contributed  
19 funds to the education savings account.

20  
21 6-15-2909. Audit.

22 (a) By October 1 of each year, an eligible nonprofit organization  
23 shall have an annual financial audit of its accounts and records conducted in  
24 accordance with generally accepted auditing standards by an independent  
25 certified public accountant licensed in this state.

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

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

31  
32 6-15-2910. Autonomy of nonpublic schools and providers of educational  
33 services.

34 (a) A nonpublic school or provider of educational services that  
35 receives payment from an education savings account under this subchapter is  
36 not considered an agent or instrumentality of the State of Arkansas or a

1 public school district.

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

6 (c) As a condition of continued receipt of funds from an education  
7 savings account, the state board may require a nonpublic school or provider  
8 of educational services that receives payment from an education savings  
9 account under this subchapter to certify on a semiannual basis that an  
10 eligible student:

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

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

14 (d) Any personally identifiable information collected under this  
15 section concerning an eligible student is an education record under § 25-19-  
16 105(b)(2) and is exempt from the Freedom of Information Act of 1967, § 25-19-  
17 101 et seq.

18  
19 6-15-2911. Rules.

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

22  
23 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5, is  
24 amended to add an additional section to read as follows:

25 26-51-515. Tax credit for contributions for education savings  
26 accounts.

27 (a) A state income tax credit is allowed against the taxes imposed by  
28 the Income Tax Act of 1929, § 26-51-101 et seq., for sixty-five percent (65%)  
29 of an eligible contribution approved by the Department of Finance and  
30 Administration under subsection (b) of this section made by the taxpayer for  
31 a tax year to an eligible nonprofit organization that is certified under the  
32 Parental Choice Scholarship Program, § 6-15-2901 et seq., at the time of the  
33 contribution.

34 (b)(1)(A) Before making the contribution to an eligible nonprofit  
35 organization under subsection (a) of this section, a taxpayer shall notify  
36 the eligible nonprofit organization of the total amount of contributions that

1 the taxpayer intends to make to the eligible nonprofit organization.

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

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

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

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

16 (F)(i) If the eligible nonprofit organization receives the  
17 certified contribution from the taxpayer within the required twenty (20)  
18 days, the eligible nonprofit organization shall immediately notify the  
19 Department of Finance and Administration so the Department of Finance and  
20 Administration may record the tax credit on the taxpayer's account as of July  
21 1.

22 (ii) If the eligible nonprofit organization does not  
23 receive the certified contribution from the taxpayer within the required  
24 twenty (20) days, the eligible nonprofit organization shall immediately  
25 notify the Department of Finance and Administration.

26 (G) After the Department of Finance and Administration  
27 receives notice that the eligible nonprofit organization did not receive the  
28 certified contribution:

29 (i) The certification becomes void; and

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

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

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

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

8 (C) An eligible nonprofit organization shall report to the  
9 Department of Finance and Administration by November 1 the amount of the  
10 certified contributions under subdivision (b)(1) of this section received by  
11 the eligible nonprofit organization being used to fund education savings  
12 accounts for that academic year.

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

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

19 (ii) Whose contributions were used to fund education  
20 savings accounts.

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

25 (C) An eligible nonprofit organization shall notify the  
26 Department of Finance and Administration of the taxpayers who meet the  
27 requirements under subdivisions (b)(3)(A)(i) and (ii) of this section before  
28 the Department of Finance and Administration begins certifying contributions  
29 for fiscal year 2019.

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

34 (d) In fiscal years 2019, 2020, and 2021, the total amount of state  
35 income tax credits made under this section shall equal the amount approved by  
36 the Department of Finance and Administration under subdivision (b)(1) of this

1 section, not to exceed three million dollars (\$3,000,000).

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

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

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

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

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

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

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

28 (j)(1) An eligible taxpayer may rescind all or part of the eligible  
29 taxpayer's allocated state income tax credit under this section.

30 (2) The amount rescinded shall become available for purposes of  
31 the cap for the state fiscal year under this section to an eligible taxpayer  
32 as approved by the Department of Finance and Administration if the eligible  
33 taxpayer receives notice from the Department of Finance and Administration  
34 that the rescission has been accepted by the Department of Finance and  
35 Administration and the eligible taxpayer has not previously rescinded any or  
36 all of the eligible taxpayer's allocated state income tax credit under this

1 section more than one (1) time in the previous three (3) tax years.

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

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

9 (2) The Department of Finance and Administration and the  
10 Department of Education shall develop a cooperative agreement to assist in  
11 the administration of this section.

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

16  
17 SECTION 3. DO NOT CODIFY. This act shall be implemented as a four-  
18 year pilot program beginning with the 2018-2019 school year.

19  
20 /s/B. Johnson  
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