



February 28, 2018

---

---

# ENGROSSED HOUSE BILL No. 1039

---

DIGEST OF HB 1039 (Updated February 27, 2018 12:18 pm - DI 73)

**Citations Affected:** IC 6-3; noncode.

**Synopsis:** 529 plans. Provides the following for purposes of the state income tax credit for contributions to a college choice 529 education savings plan: (1) The term "qualified higher education expenses" has the meaning set forth in the Internal Revenue Code as in effect on January 1, 2017. (2) A taxpayer is not entitled to the credit for money that is credited to an account and that will be used to pay for expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school or that will be transferred to an ABLE account. (3) For purposes of determining the recapture of the credit, a withdrawal or distribution that is used to pay for expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school or that is a rollover distribution or transfer of assets or to an ABLE account is a nonqualified withdrawal. Urges the legislative council to assign to the interim study committee on fiscal policy certain study topics related to 529 plans. Requires the Indiana education savings authority to report to the interim study committee on fiscal policy concerning the investment of assets under the education savings programs it administers, including information concerning the ways in which the investment of those assets benefits Indiana.

**Effective:** January 1, 2018 (retroactive); July 1, 2018.

---

---

## Culver, Cherry, Heine, Klinker

(SENATE SPONSORS — BOOTS, MISHLER, RANDOLPH LONNIE M)

---

---

January 3, 2018, read first time and referred to Committee on Ways and Means.  
January 11, 2018, amended, reported — Do Pass.  
January 16, 2018, read second time, ordered engrossed. Engrossed.  
January 18, 2018, read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 1, 2018, read first time and referred to Committee on Tax and Fiscal Policy.  
February 27, 2018, amended, reported favorably — Do Pass.

---

---

EH 1039—LS 6182/DI 73





February 28, 2018

Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1039

---

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-3-3-12, AS AMENDED BY P.L.181-2016,  
2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2018 (RETROACTIVE)]: Sec. 12. (a) As used in this  
4 section, "account" has the meaning set forth in IC 21-9-2-2.  
5 (b) As used in this section, "account beneficiary" has the meaning  
6 set forth in IC 21-9-2-3.  
7 (c) As used in this section, "account owner" has the meaning set  
8 forth in IC 21-9-2-4.  
9 (d) As used in this section, "college choice 529 education savings  
10 plan" refers to a college choice 529 investment plan established under  
11 IC 21-9.  
12 (e) As used in this section, "contribution" means the amount of  
13 money directly provided to a college choice 529 education savings plan  
14 account by a taxpayer. A contribution does not include any of the  
15 following:  
16 (1) Money credited to an account as a result of bonus points or  
17 other forms of consideration earned by the taxpayer that result in

**EH 1039—LS 6182/DI 73**



1 a transfer of money to the account.

2 (2) Money transferred from any other qualified tuition program  
3 under Section 529 of the Internal Revenue Code or from any other  
4 similar plan.

5 **(3) Money that is credited to an account and that:**

6 **(A) will be used to pay for expenses for tuition in**  
7 **connection with enrollment or attendance at an elementary**  
8 **or secondary public, private, or religious school permitted**  
9 **under Section 529 of the Internal Revenue Code; or**

10 **(B) will be transferred to an ABLE account (as defined in**  
11 **Section 529A of the Internal Revenue Code).**

12 (f) As used in this section, "nonqualified withdrawal" means a  
13 withdrawal or distribution from a college choice 529 education savings  
14 plan that is not a qualified withdrawal.

15 (g) As used in this section, "qualified higher education expenses"  
16 has the meaning set forth in ~~HC 21-9-2-19.5~~. **Section 529 of the**  
17 **Internal Revenue Code as in effect on January 1, 2017.**

18 (h) As used in this section, "qualified withdrawal" means a  
19 withdrawal or distribution from a college choice 529 education savings  
20 plan that is made:

21 (1) to pay for qualified higher education expenses, excluding any  
22 withdrawals or distributions used to pay for qualified higher  
23 education expenses if the withdrawals or distributions are made  
24 from an account of a college choice 529 education savings plan  
25 that is terminated within twelve (12) months after the account is  
26 opened;

27 (2) as a result of the death or disability of an account beneficiary;

28 (3) because an account beneficiary received a scholarship that  
29 paid for all or part of the qualified higher education expenses of  
30 the account beneficiary, to the extent that the withdrawal or  
31 distribution does not exceed the amount of the scholarship; or

32 (4) by a college choice 529 education savings plan as the result of  
33 a transfer of funds by a college choice 529 education savings plan  
34 from one (1) third party custodian to another.

35 A qualified withdrawal does not include **any withdrawal or**  
36 **distribution that is used to pay for expenses for tuition in**  
37 **connection with enrollment or attendance at an elementary or**  
38 **secondary public, private, or religious school or that is a rollover**  
39 **distribution or transfer of assets from a college choice 529 education**  
40 **savings plan to any other qualified tuition program under Section 529**  
41 **of the Internal Revenue Code (or to any other similar plan) or to an**  
42 **ABLE account (as defined in Section 529A of the Internal Revenue**



- 1 **Code).**
- 2 (i) As used in this section, "taxpayer" means:
- 3 (1) an individual filing a single return; or
- 4 (2) a married couple filing a joint return.
- 5 (j) A taxpayer is entitled to a credit against the taxpayer's adjusted
- 6 gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable
- 7 year equal to the least of the following:
- 8 (1) Twenty percent (20%) of the amount of the total contributions
- 9 made by the taxpayer to an account or accounts of a college
- 10 choice 529 education savings plan during the taxable year.
- 11 (2) One thousand dollars (\$1,000).
- 12 (3) The amount of the taxpayer's adjusted gross income tax
- 13 imposed by IC 6-3-1 through IC 6-3-7 for the taxable year,
- 14 reduced by the sum of all credits (as determined without regard to
- 15 this section) allowed by IC 6-3-1 through IC 6-3-7.
- 16 **A taxpayer is not entitled to a credit under this section for money**
- 17 **that is credited to an account and that will be used to pay for**
- 18 **expenses for tuition in connection with enrollment or attendance at**
- 19 **an elementary or secondary public, private, or religious school or**
- 20 **that will be transferred to an ABLE account (as defined in section**
- 21 **529A of the Internal Revenue Code).**
- 22 (k) A taxpayer who makes a contribution to a college choice 529
- 23 education savings plan is considered to have made the contribution on
- 24 the date that:
- 25 (1) the taxpayer's contribution is postmarked or accepted by a
- 26 delivery service, for contributions that are submitted to a college
- 27 choice 529 education savings plan by mail or delivery service; or
- 28 (2) the taxpayer's electronic funds transfer is initiated, for
- 29 contributions that are submitted to a college choice 529 education
- 30 savings plan by electronic funds transfer.
- 31 (l) A taxpayer is not entitled to a carryback, carryover, or refund of
- 32 an unused credit.
- 33 (m) A taxpayer may not sell, assign, convey, or otherwise transfer
- 34 the tax credit provided by this section.
- 35 (n) To receive the credit provided by this section, a taxpayer must
- 36 claim the credit on the taxpayer's annual state tax return or returns in
- 37 the manner prescribed by the department. The taxpayer shall submit to
- 38 the department all information that the department determines is
- 39 necessary for the calculation of the credit provided by this section.
- 40 (o) An account owner of an account of a college choice 529
- 41 education savings plan must repay all or a part of the credit in a taxable
- 42 year in which any nonqualified withdrawal is made from the account.



1 The amount the taxpayer must repay is equal to the lesser of:

2 (1) twenty percent (20%) of the total amount of nonqualified  
3 withdrawals made during the taxable year from the account; or

4 (2) the excess of:

5 (A) the cumulative amount of all credits provided by this  
6 section that are claimed by any taxpayer with respect to the  
7 taxpayer's contributions to the account for all prior taxable  
8 years beginning on or after January 1, 2007; over

9 (B) the cumulative amount of repayments paid by the account  
10 owner under this subsection for all prior taxable years  
11 beginning on or after January 1, 2008.

12 **However, in the case of a nonqualified withdrawal that is used to**  
13 **pay for expenses for tuition in connection with enrollment or**  
14 **attendance at an elementary or secondary public, private, or**  
15 **religious school or that is transferred to an ABLE account (as**  
16 **defined in section 529A of the Internal Revenue Code), the credit**  
17 **recapture under this subsection applies only to the extent that the**  
18 **taxpayer previously claimed a credit under this section for those**  
19 **amounts.**

20 (p) Any required repayment under subsection (o) shall be reported  
21 by the account owner on the account owner's annual state income tax  
22 return for any taxable year in which a nonqualified withdrawal is made.

23 (q) A nonresident account owner who is not required to file an  
24 annual income tax return for a taxable year in which a nonqualified  
25 withdrawal is made shall make any required repayment on the form  
26 required under IC 6-3-4-1(2). If the nonresident account owner does  
27 not make the required repayment, the department shall issue a demand  
28 notice in accordance with IC 6-8.1-5-1.

29 (r) The executive director of the Indiana education savings authority  
30 shall submit or cause to be submitted to the department a copy of all  
31 information returns or statements issued to account owners, account  
32 beneficiaries, and other taxpayers for each taxable year with respect to:

33 (1) nonqualified withdrawals made from accounts of a college  
34 choice 529 education savings plan for the taxable year; or

35 (2) account closings for the taxable year.

36 SECTION 2. [EFFECTIVE JULY 1, 2018] (a) **The legislative**  
37 **council is urged to assign the following topics to the interim study**  
38 **committee on fiscal policy for study during the 2018 interim:**

39 (1) **Whether the annual limit on the adjusted gross income tax**  
40 **credit for contributions to a college choice 529 savings plan**  
41 **under IC 6-3-3-12 should be modified in some way to allow a**  
42 **taxpayer to make greater contributions earlier in the**



- 1 taxpayer's schedule of savings.  
2 (2) The implications of changes made by the federal Tax Cuts  
3 and Jobs Act (P.L.115-97) to the allowable uses of qualified  
4 tuition plans under Section 529 of the Internal Revenue Code  
5 (26 U.S.C. 529).  
6 (3) Whether the adjusted gross income tax deduction for  
7 education expenditures under IC 6-3-2-22 should be extended  
8 to expenditures made in connection with the enrollment,  
9 attendance, and participation in a public school elementary or  
10 high school education program.  
11 (4) Issues related to providing state incentives to an employer  
12 that contributes to an employee's college choice 529 education  
13 savings plan.  
14 (5) Whether a rollover distribution or transfer of assets from  
15 a college choice 529 education savings plan to an ABLE  
16 account should be a qualified withdrawal for purposes of the  
17 state income tax credit under IC 6-3-3-12.  
18 (6) Whether taxpayers should be allowed to designate that a  
19 tax refund be paid into a college choice 529 education savings  
20 plan.  
21 (b) The Indiana education savings authority created under  
22 IC 21-9-3 shall before November 1, 2018, report to the interim  
23 study committee on fiscal policy in an electronic format under  
24 IC 5-14-6 concerning the investment of assets under the education  
25 savings programs established under IC 21-9, including information  
26 concerning the ways in which the investment of those assets  
27 benefits Indiana.  
28 (c) This SECTION expires January 1, 2019.  
29 SECTION 3. An emergency is declared for this act.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1039, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning taxation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1039 as introduced.)

BROWN T

Committee Vote: yeas 22, nays 0.

## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1039, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-3-3-12, AS AMENDED BY P.L.181-2016, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

(d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(e) As used in this section, "contribution" means the amount of

**EH 1039—LS 6182/DI 73**





money directly provided to a college choice 529 education savings plan account by a taxpayer. A contribution does not include any of the following:

(1) Money credited to an account as a result of bonus points or other forms of consideration earned by the taxpayer that result in a transfer of money to the account.

(2) Money transferred from any other qualified tuition program under Section 529 of the Internal Revenue Code or from any other similar plan.

**(3) Money that is credited to an account and that:**

**(A) will be used to pay for expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school permitted under Section 529 of the Internal Revenue Code; or**

**(B) will be transferred to an ABLE account (as defined in Section 529A of the Internal Revenue Code).**

(f) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(g) As used in this section, "qualified higher education expenses" has the meaning set forth in ~~HC 21-9-2-19.5~~ **Section 529 of the Internal Revenue Code as in effect on January 1, 2017.**

(h) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

(1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or

(4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include **any withdrawal or distribution that is used to pay for expenses for tuition in connection with enrollment or attendance at an elementary or**



**secondary public, private, or religious school or that is a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code (or to any other similar plan) or to an ABLÉ account (as defined in Section 529A of the Internal Revenue Code).**

(i) As used in this section, "taxpayer" means:

- (1) an individual filing a single return; or
- (2) a married couple filing a joint return.

(j) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

- (1) Twenty percent (20%) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

**A taxpayer is not entitled to a credit under this section for money that is credited to an account and that will be used to pay for expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school or that will be transferred to an ABLÉ account (as defined in section 529A of the Internal Revenue Code).**

(k) A taxpayer who makes a contribution to a college choice 529 education savings plan is considered to have made the contribution on the date that:

- (1) the taxpayer's contribution is postmarked or accepted by a delivery service, for contributions that are submitted to a college choice 529 education savings plan by mail or delivery service; or
- (2) the taxpayer's electronic funds transfer is initiated, for contributions that are submitted to a college choice 529 education savings plan by electronic funds transfer.

(l) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(m) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(n) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to



the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(o) An account owner of an account of a college choice 529 education savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:

- (1) twenty percent (20%) of the total amount of nonqualified withdrawals made during the taxable year from the account; or
- (2) the excess of:
  - (A) the cumulative amount of all credits provided by this section that are claimed by any taxpayer with respect to the taxpayer's contributions to the account for all prior taxable years beginning on or after January 1, 2007; over
  - (B) the cumulative amount of repayments paid by the account owner under this subsection for all prior taxable years beginning on or after January 1, 2008.

**However, in the case of a nonqualified withdrawal that is used to pay for expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school or that is transferred to an ABLÉ account (as defined in section 529A of the Internal Revenue Code), the credit recapture under this subsection applies only to the extent that the taxpayer previously claimed a credit under this section for those amounts.**

(p) Any required repayment under subsection (o) shall be reported by the account owner on the account owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(q) A nonresident account owner who is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident account owner does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.

(r) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each taxable year with respect to:

- (1) nonqualified withdrawals made from accounts of a college choice 529 education savings plan for the taxable year; or
- (2) account closings for the taxable year."

Page 1, between lines 17 and 18, begin a new line block indented and insert:

**EH 1039—LS 6182/DI 73**



**"(4) Issues related to providing state incentives to an employer that contributes to an employee's college choice 529 education savings plan.**

**(5) Whether a rollover distribution or transfer of assets from a college choice 529 education savings plan to an ABLE account should be a qualified withdrawal for purposes of the state income tax credit under IC 6-3-3-12.**

**(6) Whether taxpayers should be allowed to designate that a tax refund be paid into a college choice 529 education savings plan.**

**(b) The Indiana education savings authority created under IC 21-9-3 shall before November 1, 2018, report to the interim study committee on fiscal policy in an electronic format under IC 5-14-6 concerning the investment of assets under the education savings programs established under IC 21-9, including information concerning the ways in which the investment of those assets benefits Indiana."**

Page 1, line 18, delete "(b)" and insert "(c)".

Page 1, after line 18, begin a new paragraph and insert:

**"SECTION 3. An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1039 as printed January 12, 2018.)

HOLDMAN, Chairperson

Committee Vote: Yeas 10, Nays 0.

