

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

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: S3/7/17

# A Bill

SENATE BILL 236

By: Senators Files, *Maloch, B. Sample*

By: Representatives Leding, *Bragg, Warren*

## For An Act To Be Entitled

AN ACT TO ESTABLISH A SMALL BUSINESS RETIREMENT PROGRAM IN ARKANSAS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### Subtitle

TO ESTABLISH A SMALL BUSINESS RETIREMENT PROGRAM IN ARKANSAS; AND TO DECLARE AN EMERGENCY.

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

*SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative findings.*

*The General Assembly finds that:*

*(1) There is a retirement savings crisis in Arkansas;*

*(2) According to the National Institute on Retirement Security, the average household saves only two thousand five hundred dollars (\$2,500) for retirement;*

*(3) The amount an average household saves for retirement is due largely to the unavailability of a payroll deduction retirement plan for workers;*

*(4) An employee is fifteen (15) times more likely to save for retirement if the amount to be saved is removed from the employee's regular paycheck;*

*(5) Five hundred thirty thousand (530,000) citizens of Arkansas lack access to a workplace retirement savings plan;*

*(6) Although there are numerous available options, only five*



percent (5%) of individuals who do not have access to a payroll deduction plan open their own individual retirement account;

(7) An employee who is unable to effectively build retirement savings is at risk of living on low income as a retiree and is more likely to depend on social safety-net programs;

(8) Dependency on social safety-net programs costs taxpayer dollars down the line;

(9) Small businesses often choose not to offer a retirement plan to employees due to concerns about costs, complexity, time burdens, and potential liability;

(10) In response to the apprehensions of small businesses, the Arkansas Small Business Voluntary Retirement Program should be established;

(11) The program will assist small businesses by relieving entrepreneurs of the operational burden of running a retirement plan;

(12) Voluntary payroll deduction individual retirement accounts through public and private partnership should be established as part of the program;

(13) The deduction will enable small business owners to voluntarily offer their employees access to the program, which will provide low-cost, professionally managed, diversified investment options;

(14) Many private financial services firms in Arkansas offer high-quality retirement options for small businesses and their employees;

(15) The Arkansas Small Business Voluntary Retirement Marketplace will supplement the program by educating small businesses on the availability of low-cost retirement plans and investment products; and

(16) The program will help Arkansas close the retirement savings access gap, protect the fiscal stability of the state and its citizens well into the future, and further secure its place as a national leader in retirement and investor promotion and protection.

SECTION 2. Arkansas Code Title 11 is amended to add an additional chapter to read as follows:

CHAPTER 16

ARKANSAS SMALL BUSINESS VOLUNTARY RETIREMENT PROGRAM

11-16-101. Definitions.

As used in this chapter:

(1) "Administrative costs" means all costs, including without limitation, administrative expenses, employee wages or salaries, insurance expenses, investment expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, investment advice costs, trading costs, and insurance annuitization costs;

(2) "Automatic escalation" means a participating employee's election to automatically increase contributions to his or her retirement savings account in the Arkansas Small Business Voluntary Retirement Program;

(3) "Employee" means an individual who is eighteen (18) years of age or older and is employed by a small nongovernmental employer and has wages that are subject to the Income Tax Act of 1929;

(4) "Enrollee" means an employee who enrolls in an investment product offered through the Arkansas Small Business Voluntary Retirement Marketplace;

(5) "Investment product" means an annuity, savings account, certificate of deposit, money market account, bond, mutual fund, or another form of investment not prohibited by the Internal Revenue Code of 1986 and authorized by the program;

(6) "Nonparticipating employer" means a small nongovernmental employer in Arkansas that has not elected to participate in the program;

(7) "Participating employee" means an individual who is:

(A) Employed by a participating employer and makes contributions to his or her retirement savings account in the program in accordance with the procedures developed under § 11-16-112; or

(B) Employed by a nonparticipating employer and in accordance with the procedures developed under § 11-16-112:

(i) Elects to participate in the program; and

(ii) Makes contributions to his or her retirement savings account in the program;

(8) "Participating employer" means a small nongovernmental employer in the state that elects to participate in the program in accordance with the procedures developed under § 11-16-112;

(9) "Private sector financial services firm" means a person or entity that:

(A) Meets the requirements of federal law to offer a retirement plan; and

(B) Is licensed or holds a certificate of authority and good standing from either the Securities and Exchange Commission or the Department of Finance and Administration;

(10) "Small nongovernmental employer" means a nongovernmental employer that employs no more than one hundred (100) employees in Arkansas for each working day in each of at least twenty (20) calendar weeks of the current or preceding calendar year; and

(11) "Total fees" means all costs, including without limitation, administrative expenses, investment expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, investment advice costs, trading costs, and insurance annuitization costs.

11-16-102. Creation - Purpose - Liability.

(a) The Arkansas Small Business Voluntary Retirement Program is established.

(b) The purpose of the program is to provide and maintain a cost-effective group retirement program in which a small nongovernmental employer and its employees may elect to participate.

(c)(1) The program does not create or constitute a debt, obligation, or liability of the state.

(2) Any contract entered into by the Board of Trustees of the Arkansas Small Business Voluntary Retirement Program in connection with the program does not create or constitute a debt of the state and is solely an obligation of the program.

(3) Any person or entity contracting with a state agency in connection with the program shall indemnify the state.

11-16-103. Program office and staff.

(a) There is established as an office in the Department of Finance and Administration the Arkansas Small Business Voluntary Retirement Program.

(b) With the approval of the Board of Trustees of the Arkansas Small Business Voluntary Retirement Program, the department may employ and fix the compensation of any secretarial, clerical, professional, and other personnel as may be required for the proper administration of the program.

(c)(1) Subject to appropriation, the state may pay administrative costs associated with the creation, publication, and management of the program until sufficient assets are available in the Arkansas Small Business Voluntary Retirement Program Administrative Fund for administrative costs.

(2) Once the administrative fund has sufficient assets to pay for administrative costs, then the:

(A) Administrative costs of the program shall be paid from the administrative fund;

(B) Salaries of employees of the program shall be paid from the administrative fund; and

(C) Any funds provided to the program under subdivision (c)(1) of this section shall be returned to the state from the administrative fund.

11-16-104. Creation - Program Fund.

(a) The Arkansas Small Business Voluntary Retirement Program Fund is established as a trust fund outside of the State Treasury.

(b) The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program shall operate the trust fund in a manner that ensures that the accounts of participating employees meet the requirements for an individual retirement account under the Internal Revenue Code of 1986.

(c)(1) The trust fund shall include the individual retirement accounts of participating employees that shall be accounted for as individual retirement savings accounts.

(2) The moneys in the trust fund shall consist of:

(A) Payroll deductions and contributions received from a participating employer and a participating employee for deposit into the participating employee's individual retirement savings account under this chapter; and

(B) Any assets and earnings resulting from the investment of moneys that are deposited into the individual retirement savings accounts of participating employees under this chapter.

(3)(A) The assets and earnings of the trust fund shall be used to carry out the purposes of this chapter and shall not be commingled with state funds or administrative funds.

(B) The state shall not have a claim to or against, or

interest in, the assets and earnings of the trust fund.

(4) The trust fund shall not be considered the property of the state or of a department, institution, or agency of the state.

11-16-105. Creation - Administrative Fund.

(a)(1) The Arkansas Small Business Voluntary Retirement Program Administrative Fund is established as a fund in the State Treasury.

(2) The Arkansas Small Business Voluntary Retirement Program Administrative Fund is separate and apart from the general revenue operating funds of the State Treasury.

(b)(1) The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program shall use moneys in the administrative fund to pay for administrative costs incurred in carrying out this chapter.

(2) To ensure minimum administrative cost, if the unobligated balances in the Arkansas Small Business Voluntary Retirement Program Administrative Fund exceeds two hundred fifty thousand dollars (\$250,000) on June 30 of each fiscal year, the Treasurer of State shall transfer the excess unobligated balances to the Arkansas Small Business Voluntary Retirement Program Fund.

(c) The Arkansas Small Business Voluntary Retirement Program Administrative Fund shall consist of grants or other moneys designated for administrative purposes that is received from:

(1) The state, federal government, or other local government;  
and

(2) A person, firm, partnership, or corporation.

(d) Any earned interest that is attributable to moneys in the Arkansas Small Business Voluntary Retirement Program Administrative Fund shall be deposited into the Arkansas Small Business Voluntary Retirement Program Administrative Fund.

11-16-106. Board of trustees - Creation - Members.

(a) The administration and control of the Arkansas Small Business Voluntary Retirement Program shall be vested in the Board of Trustees of the Arkansas Small Business Voluntary Retirement Program.

(b) The board shall carry out the purpose of the program as provided under § 11-16-102.

(c)(1)(A) For the first year of the program's operation, the board shall consist of five (5) trustees with expertise in retirement savings plan administration or investment, or both, appointed by the Governor with the advice of the chairs of the Joint Committee on Public Retirement and Social Security Programs.

(B)(i) Each trustee of the board appointed by the Governor under subdivision (c)(1)(A) of this section shall be a voting member and shall have one (1) vote on each question before the board.

(ii) At least three (3) concurring votes shall be necessary for a decision by the board at any meeting of the board.

(2)(A) After the first year of the program's operation, the board shall consist of the following nine (9) trustees:

(i) The Auditor of State, the Treasurer of State, and the Director of the Department of Finance and Administration shall be ex officio nonvoting members;

(ii) Two (2) representatives with expertise in retirement savings plan administration or investment, or both, appointed by the Governor, who shall be voting members;

(iii) Two (2) representatives of participating employers, appointed by the Governor, who shall be voting members; and

(iv) Two (2) representatives of participating employees, appointed by the Governor, who shall be voting members.

(B)(i) Each trustee of the board that is a voting member shall have one (1) vote on each question before the board.

(ii) At least five (5) concurring votes shall be necessary for a decision by the board at any meeting of the board.

(d) The board shall elect annually one (1) of its trustees as chair and one (1) of its trustees as vice chair.

(e)(1) The trustees of the board shall serve without compensation but may be reimbursed for necessary travel expenses incurred in connection with their board duties.

(2) Any reimbursement authorized under this subsection shall be paid with funds from the Arkansas Small Business Voluntary Retirement Program Administrative Fund.

(f)(1) The board shall appoint an executive director who shall be the executive administrative officer of the program and the ex officio secretary

of the board.

(2) The executive director of the program shall not vote on questions before the board and shall be directly responsible for the board.

(3) By board resolution, the board may delegate any of the powers and duties vested in or imposed upon it by law to the executive director.

(g) An appointed trustee's term of office shall be four (4) years.

(h)(1) If a trustee of the board resigns from the board or is otherwise unable to complete his or her term, the Governor shall declare a vacancy on the board.

(2)(A) After a trustee is appointed to the board, if the trustee of the board fails to attend more than three (3) of the meetings of the board during a twelve-month period, the board shall determine that the trustee has resigned by board resolution and notify the Governor of the trustee's resignation.

(B) Upon receiving the notice under subdivision (h)(2)(A) of this section, the Governor shall declare a vacancy on the board.

(3) The Governor shall appoint an appropriate representative to fill the vacancy for the remainder of the unexpired term within thirty (30) days of the date on which the vacancy is declared.

11-16-107. Board of trustees - Meetings.

(a)(1) The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program shall hold regular meetings at least quarterly every calendar year.

(2) Meetings of the board may be called by the chair or by a majority of the trustees of the board in a manner established by the board.

(3) All meetings of the board shall be public.

(b) Subject to the limitations of this chapter, the board shall adopt rules of procedure for its own proceedings and shall keep a record of its proceedings.

11-16-108. Board of trustees - Administration - Duties.

(a) The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program shall develop procedures for the operation of the Arkansas Small Business Voluntary Retirement Program that are consistent with this

chapter and applicable federal law.

(b) The procedures developed by the board under subsection (a) of this section shall include, without limitation, procedures:

(1) For electing to participate or discontinue participation in the program;

(2) For making contributions and payroll deductions and remittances;

(3) Concerning the portability of a participating employee's participation and benefits in the program;

(4)(A) For approving investments and defaults.

(B) The procedures for the approval of investments and defaults shall:

(i) Require investments made by participating employees to be pooled and professionally managed;

(ii) Require a default contribution rate of five percent (5%) of the participating employee's pay to be applied unless otherwise specified by the participating employee;

(iii) Require a default investment to be treated as a life-cycle fund with a target date based on the participating employee's age unless otherwise specified by the participating employee;

(iv) Provide that the board may establish additional investment options for a participating employee;

(v) Require administrative costs to be maintained at an amount that is as low as feasibly possible during the initial five (5) years of the program; and

(vi) Require administrative costs to be maintained at an amount that does not exceed seventy-five-hundredths of one percent (0.75%) of the total Arkansas Small Business Voluntary Retirement Program Administrative Fund after five (5) years of the program's operation;

(5) For electing an automatic escalation;

(6) For authorizing an automatic deduction in a manner consistent with federal law;

(7) For converting moneys in a participating employee's individual retirement savings account into lifetime income streams upon retirement when elected by the participating employees;

(8) For the payment of fees charged by an investment

professional; and

(9) For complying with any other provisions of this chapter.

(c) The board may procure insurance against any loss in connection with the property, assets, or activities of the program as needed.

11-16-109. Public information.

(a)(1) The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program and the Department of Finance and Administration shall develop and distribute information to educate the public, particularly employers and employees, about the Arkansas Small Business Voluntary Retirement Program.

(2) The Department of Finance and Administration shall maintain a link to the educational information required under subdivision (a)(1) of this section on its website.

(b) The office of the Secretary of State, Department of Workforce Services, Department of Labor, Arkansas Economic Development Commission, Arkansas Small Business and Technology Development Center, and Arkansas Development Finance Authority shall either distribute or maintain a website link to the educational information required under subdivision (a)(1) of this section.

11-16-110. Contracts.

The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program may contract with a provider that:

(1) Provides options for individual retirement accounts and investment products under the Arkansas Small Business Voluntary Retirement Program;

(2) Maintains a website for enrollment in the program;

(3) Provides record keeping, reporting, and other administrative services;

(4) Provides management services for moneys deposited in an investment product;

(5) Develops educational material for the program; or

(6) Educates the general public about the program.

11-16-111. Reporting.

(a) The Governor or Joint Committee on Public Retirement and Social Security Programs may request the following from the Board of Trustees of the Arkansas Small Business Voluntary Retirement Program:

(1) A study or evaluation of the Arkansas Small Business Voluntary Retirement Program;

(2) A summary that contains information on the benefits provided by the program, and the number of participating employers and participating employees in the program; and

(3) Any other information relevant to make a full, fair, and effective disclosure of the operations of the program, excluding fiduciary or commercial information.

(b) The board shall comply with a request made under subsection (a) of this section no later than thirty (30) days from the date on which the request is received or at another reasonable time specified by the Governor or Joint Committee on Public Retirement and Social Security Programs.

11-16-112. Participation.

(a) A small nongovernmental employer in this state may elect to participate in the Arkansas Small Business Voluntary Retirement Program if the employer does not offer an active retirement program for its employees before electing to participate in the program.

(b) A participating employer shall comply with the provisions of this chapter and the procedures developed by the Board of Trustees of the Arkansas Small Business Voluntary Retirement Program under § 11-16-108.

(c) A participating employer remains eligible to participate in the program if the number of its employees exceeds one hundred (100) after the date on which the participating employer elects to join the program.

(d) A participating employer may elect to discontinue participation in the program by complying with the procedures developed under § 11-16-108.

(e)(1) An employee of a nonparticipating employer may elect to participate in the program by complying with the procedures developed under § 11-16-108.

(2) If an employee of a nonparticipating employer elects to participate in the program, the employee shall make deposits in his or her account in accordance with the procedures developed under § 11-16-108.

(3) A nonparticipating employer is not required to make payroll deductions or remittances for an employee who elects to participate in the

program under subdivision (e)(1) of this section.

11-16-113. Confidentiality of information.

(a) Information specific to a participating employee is confidential and exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Information specific to a participating employee includes, without limitation:

(1) Identifying information and other similar items;

(2) Account balances and other similar items; and

(3) Transaction details and other similar items.

11-16-114. Participating employers - Reports.

A participating employer shall notify its employees annually of the following:

(1) Its status as a participating employer in the Arkansas Small Business Voluntary Retirement Program;

(2) The steps an employee may take to become a participating employee in the program; and

(3) Other information required by the Board of Trustees of the Arkansas Small Business Voluntary Retirement Program.

11-16-115. Board of trustees - Statement of participation - Reports.

(a) The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program shall:

(1) Provide a written statement confirming the status of a participating employer to a small nongovernmental employer that elects to participate in the Arkansas Small Business Voluntary Retirement Program in the calendar year;

(2)(A) Provide an electronic list of the participating employers that receive the written statement required under subdivision (a)(1) of this section to the Department of Finance and Administration.

(B) The department shall make the list provided under subdivision (a)(2) of this section available on its website; and

(3)(A) Provide ongoing reports to participating employees regarding their respective retirement savings accounts.

(B) A report required under subdivision (a)(3)(A) of this

section shall include without limitation:

(i) Information on the frequency of reports provided under subdivision (a)(3)(A) of this section; and

(ii) An itemization of the information contained in the report.

(b) The board may contract with one (1) or more providers for the purpose of complying with this section.

11-16-116. Relation to the Employee Retirement Income Security Act of 1974.

The Board of Trustees of the Arkansas Small Business Voluntary Retirement Program shall not implement the Arkansas Small Business Voluntary Retirement Program if the:

(1) Individual retirement accounts offered under the program do not qualify for favorable federal income tax treatment ordinarily given to individual retirement accounts under the Internal Revenue Code of 1986; or

(2) Program is determined to be an employee benefit plan and state or employer liability is established under the federal Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406.

11-16-117. Arkansas Small Business Voluntary Retirement Marketplace.

(a) The Department of Finance and Administration shall maintain a website to be known as the "Arkansas Small Business Voluntary Retirement Marketplace".

(b)(1) The purpose of the marketplace is to assist small nongovernmental employers in identifying private sector financial services firms that provide retirement arrangements that can be implemented by a small nongovernmental business employer in lieu of participating in the Arkansas Small Business Voluntary Retirement Program.

(2) A small nongovernmental business employer and a private sector financial services firm may elect to participate in the marketplace in a manner established by the department.

(c)(1) The department may charge a private sector financial services firm that offers investment products on the marketplace a fee.

(2) Any moneys received from fees charged under this subsection shall be used to establish, maintain, and promote the internet website

required under subsection (a) of this section.

(d) The department shall provide public notice of the marketplace and the website required under subsection (a) of this section before the marketplace and website become publicly available.

(e)(1) The marketplace shall not operate unless at least two (2) private sector financial services firms that offer investment products approved by the department participate in the marketplace.

(2) This subsection does not limit the number of private sector financial services firms that may participate in the marketplace if the private sector financial service firms offer investment products approved by the department.

(f) An enrollee is not entitled to participate in an investment product offered by a private sector financial services firm in the marketplace.

11-16-118. Approval of investment products.

(a)(1) The Department of Finance and Administration shall approve the participation of a private sector financial services firm in the Arkansas Small Business Voluntary Retirement Marketplace if the private sector financial services firm offers one (1) or more investment products that:

(A) Meet all applicable federal laws;

(B) Include an option for an enrollee to transfer pretax contributions into a different individual retirement account or another eligible retirement plan after the enrollee ceases participation in an investment product offered in the marketplace; and

(C)(i) Provide a private retirement plan option available to small nongovernmental business employers on a voluntary basis.

(ii) A private retirement plan option under subdivision (a)(1)(C)(i) of this section shall include without limitation diversified investment options that meet the needs of investors with varying ages and various levels of risk tolerance.

(2) The department shall revoke for a minimum of five (5) years the participation of a private sector financial services firm that does not maintain compliance with subdivision (a)(1) of this section or provides misleading or inaccurate information to an employee, an enrollee, or a small nongovernmental business employer.

(b) A private sector financial services firm that participates in the marketplace shall not charge:

- (1) Small nongovernmental employers an administrative fee; or
- (2) Enrollees more than one percent (1%) of total fees.

SECTION 3. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1147. Arkansas Small Business Voluntary Retirement Program Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Arkansas Small Business Voluntary Retirement Program Fund".

(b) The fund shall consist of moneys set out in § 11-16-104 and other moneys authorized by law.

(c) The fund shall be used for those purposes set out in §§ 11-16-102 and 11-16-103.

SECTION 4. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1258. Arkansas Small Business Voluntary Retirement Program Administrative Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "Arkansas Small Business Voluntary Retirement Program Administrative Fund".

(b) The fund shall consist of those fees set out in § 11-16-105.

(c) The fund shall be used for those purposes set out in § 11-16-102.

SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the average household saves two thousand five hundred dollars (\$2,500) for retirement; that employees who are unable to build retirement savings are at risk of living on low income as a retiree and are more likely to depend on social safety-net programs; that five hundred thirty thousand (530,000) citizens of Arkansas lack access to a workplace retirement savings plan; that the Arkansas Small Business Voluntary Retirement Program should be established in order to assist small businesses

by relieving them of the operational burden of running a retirement plan; that a voluntary payroll deduction individual retirement accounts through public and private partnership will enable small business owners to offer their employees access to the program, which will provide low-cost, professionally managed, and diversified investment options; that the Arkansas Small Business Voluntary Retirement Marketplace will supplement the program by educating small businesses on the availability of low-cost retirement plans and investment products; that this act will help Arkansas further secure its place as a national leader in retirement and investor promotion and protection; and that this act is immediately necessary to help close the retirement savings access gap and protect the fiscal stability of the state and its citizens. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Files