

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

State of Arkansas
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As Engrossed: H3/14/19 H3/18/19
A Bill

HOUSE BILL 1295

By: Representatives Warren, Capp, Coleman, Dalby, Deffenbaugh, Eubanks, M. Gray, G. Hodges, Maddox, Scott, Slape, Wing

By: Senators B. Sample, Bledsoe, E. Cheatham, K. Hammer, K. Ingram, G. Leding

For An Act To Be Entitled

*AN ACT TO ESTABLISH THE EVERY ARKANSAN RETIREMENT
PLAN OPPORTUNITY ACT; AND FOR OTHER PURPOSES.*

Subtitle

*TO ESTABLISH THE EVERY ARKANSAN
RETIREMENT PLAN OPPORTUNITY ACT.*

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

SECTION 1. Arkansas Code Title 11 is amended to add an additional chapter to read as follows:

CHAPTER 16

EVERY ARKANSAN RETIREMENT PLAN OPPORTUNITY

11-16-101. Title.

This chapter shall be known as the "Every Arkansan Retirement Plan Opportunity Act".

11-16-102. Findings.

The General Assembly finds that:

(1) Many citizens in Arkansas do not have retirement savings or have inadequate retirement savings;

(2) An estimated five hundred thirty thousand (530,000) workers, including employees of an employer, independent contractors, and the self-



employed, do not have access to an employer-sponsored retirement plan or program, or any other easy method of saving at work;

(3) It is the policy of this state to assist the Arkansas private-sector workforce, including in particular middle income and lower income working households, in voluntarily saving for retirement by encouraging and making it easier for employers to adopt a retirement savings plan for employees in Arkansas;

(4) Providing an additional adequate, portable, low-cost, and consumer protective retirement savings option to Arkansas households will ultimately:

(A) Enhance the retirement security of these households;

(B) Reduce substantial reliance on public assistance programs offered by the state; and

(C) Reduce the potential burden on taxpayers in Arkansas to finance the public assistance programs;

(5) The Arkansas 529 College Investing Plan demonstrates the feasibility of a public-private partnership that outsources investment and administration to assist the private citizens of Arkansas to save on a voluntary and cost-efficient basis; and

(6) The General Assembly intends to establish an Every Arkansan Retirement Plan Opportunity that will use the services of competent and qualified private-sector entities that are selected by the Every Arkansan Retirement Plan Opportunity Board to operate, administer, manage, and oversee the plan on behalf of the plan participants.

11-16-103. Creation.

A multiple-employer voluntary retirement savings plan that shall be known as the "Every Arkansan Retirement Plan Opportunity" is established.

11-16-104. Definitions.

As used in this chapter:

(1)(A) "Eligible employee" means an individual who:

(i) Is employed by a participating employer as an employee who works at least one thousand (1,000) hours per year;

(ii) Earns a wage or other compensation that is allocable to the State of Arkansas; and

(iii) Is at least eighteen (18) years of age.

(B) "Eligible employee" does not include an employee:

(i) Covered under the Railway Labor Act, 45 U.S.C. § 151 et seq.;

(ii) On whose behalf an employer makes a contribution to a Taft-Hartley multiemployer pension trust fund; or

(iii) Of the federal government, a state government, a county, a municipal corporation, or a state unit or instrumentality;

(2)(A) "Eligible employer" means a person or entity who is engaged in a business, industry, profession, trade, or other enterprise in Arkansas, whether for profit or nonprofit.

(B) "Eligible employer" does not include:

(i) The federal government, a state, a county, a municipal corporation, or a state unit or instrumentality; or

(ii)(a) An employer that maintains or has maintained within the most current preceding two (2) years a Specified Tax-Favored Retirement Plan for its employees.

(b) An employer is not an eligible employer if the employer:

(1) Maintains a specified tax-favored retirement plan for a portion of a calendar year that ends on or after the effective date of this act; or

(2) Adopts a specified tax-favored retirement plan that is effective for the remaining portion of the calendar year in which the employer did not maintain a specified tax-favored retirement plan;

(3) "Participant" means an eligible employee or other individual who has a balance credited to his or her account under the Every Arkansan Retirement Plan Opportunity;

(4) "Participating employer" means an eligible employer that is participating in the Every Arkansan Retirement Plan Opportunity;

(5) "Self-employed" means an individual who:

(A) Is self-employed;

(B) Has self-employed income or other compensation from self-employment that is allocable to the State; and

(C) Is at least eighteen (18) years of age;

(6) "Specified tax-favored retirement plan" means a retirement plan that is tax-qualified under or is described in and satisfies the requirements of 26 U.S.C. §§ 401, 403(b), 408(k), or 408(p);

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

(8) "Trust" means the trust in which the assets of the plan are maintained.

11-16-105. Every Arkansan Retirement Plan Opportunity – Plan requirements.

(a) The Every Arkansan Retirement Plan Opportunity shall be treated as single plan under Title 1 of the Employee Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et seq., and as described in 26 U.S.C. §§ 401(a), 401(k), and 413(c).

(b) The Every Arkansan Retirement Plan Opportunity shall:

(1) Be overseen by the Every Arkansan Retirement Plan Opportunity Board and its designees;

(2) Be set forth in a document that prescribes the terms and conditions of the Every Arkansan Retirement Plan Opportunity;

(3) Be designed and implement in a manner that is consistent with applicable federal and state law;

(4) Be professionally managed and administered by one (1) or more trustees, fiduciaries, custodians, third-party administrators, investment managers, record keepers, and any other service providers;

(5) Be available on a voluntary basis to eligible employers and eligible self-employed individuals;

(6) After written notice, automatically enroll an eligible employee who elects to participate in the Every Arkansan Retirement Plan Opportunity unless the eligible employee opts out of the Every Arkansan Retirement Plan Opportunity;

(7) Enroll a self-employed individual who elects to participate in the Every Arkansan Retirement Plan Opportunity;

(8) Provide a plan participant with the option to terminate his

or her participation in the Every Arkansan Retirement Plan Opportunity at any time;

(9) Permit voluntary pre-tax or Roth 401k deferrals by an employee;

(10) Allow voluntary employer contributions;

(11) Require an eligible employee to automatically contribute five percent (5%) of his or her salary to the Every Arkansan Retirement Plan Opportunity unless the eligible employee elects to:

(A) Opt out of the Every Arkansan Retirement Plan Opportunity; or

(B) Contribute a higher or lower percentage rate of his or her salary to the Every Arkansan Retirement Plan Opportunity;

(12) Provide for the possible increase of the contribution rate paid by a participant in the Every Arkansan Retirement Plan Opportunity;

(13) Provide for the direct deposit of contributions into investments under the Every Arkansan Retirement Plan Opportunity;

(14) In a manner that is consistent with the Employee Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et seq., and other federal law, provide for the automatic investment of a participant's contributions if the participant does not elect a particular investment option;

(15) Provide quarterly reports on the status of each participant's account to the participant;

(16) When necessary and feasible, use existing employer and public infrastructure to facilitate contributions, recordkeeping, and outreach and use pooled or collective investment arrangements;

(17) Provide that each participant who is one hundred (100%) percent vested in the Every Arkansan Retirement Plan Opportunity owns the contributions to or earnings on the amounts contributed to his or her account under the Every Arkansan Retirement Plan Opportunity;

(18) Provide that the state and employers do not have a proprietary interest in the contributions owned by a participant or in the earnings on the amounts contributed that are owned by a participant;

(19) Make provisions for participation in the Every Arkansan Retirement Plan Opportunity by an individual who is self-employed;

(20) After the three-year start-up period of the Every Arkansan Retirement Plan Opportunity that begins with the initial implementation of

the plan, keep fees and expenses below three-fourths of one percent (0.75%) of the total assets of the Every Arkansan Retirement Plan Opportunity;

(21) Establish rules and procedures that govern the distribution of funds in the Every Arkansan Retirement Plan Opportunity Administrative Trust and promote the portability of benefits; and

(22) Encourage the choice of an employer to adopt a specified tax-favored retirement plan, including the Every Arkansan Retirement Plan Opportunity.

11-16-106. Every Arkansan Retirement Plan Opportunity Board – Creation – Members.

(a) The Every Arkansan Retirement Plan Opportunity Board is established in the Office of the Treasurer of State.

(b) The board shall consist of the following members:

(1)(A) The Treasurer of State or his or her designee.

(B) The Treasurer of State or his or her designee shall be the plan administrator;

(2) An individual who is appointed by the Treasurer of State and has skill, knowledge, and experience in the field of retirement savings and investment;

(3) An individual who is appointed by the Treasurer of State and has skill, knowledge, and experience in small business;

(4) The Director of the Department of Finance and Administration or his or her designee;

(5) The Executive Director of the Arkansas Public Employees' Retirement System or his or her designee;

(6) A retired individual who shall represent the interest of retirees and is appointed by the Speaker of the House of Representatives; and

(7) A retired individual who shall represent the interest of retirees and is appointed by the President Pro Tempore of the Senate.

(c)(1) A member of the board who is appointed by the Treasurer of State, President Pro Tempore of the Senate, or the Speaker of the House of Representatives shall serve as a member of the board at the pleasure of the appointing authority.

(2) A member of the board may be reappointed.

(3)(A) The appropriate appointing authority shall appoint an

appropriate representative to fill a vacancy on the board within thirty (30) days of the date on which the vacancy occurs.

(B) An appointment to fill a vacancy on the board is immediately effective.

(d) A majority of the voting members of the board constitutes a quorum for the transaction of business before the board.

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

(2) At least four (4) concurring votes shall be necessary for a decision by the board at a meeting where all members of the board are present.

(3) At least three (3) concurring votes shall be necessary for a decision by the board at a meeting where a quorum of the members of the board are present.

(f) The Treasurer of State or his or her designee shall serve as chair of the board.

(g) The members of the board shall serve without compensation.

11-16-107. Every Arkansan Retirement Plan Opportunity Board – Powers, authority, and duties.

(a) The Every Arkansan Retirement Plan Opportunity Board:

(1) Shall be the sponsor of the Every Arkansan Retirement Plan Opportunity under the Employee Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et seq.;

(2) Shall develop and implement the Every Arkansan Retirement Plan Opportunity; and

(3) May conduct market, legal, and feasibility research for the purpose of developing and implementing the plan.

(b) The members of the board shall be fiduciaries of the plan under the Employee Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et seq., and shall have the power, authority, and duty to:

(1) Establish, implement, and maintain the plan;

(2) Design, establish, and operate the plan and any trust, account or arrangement established under the plan to align with the best practices for retirement saving;

(3) Arrange for the collective, common, and pooled investment of

assets;

(4) Develop and disseminate educational information;

(5) Adopt rules and regulations that are necessary for the implementation, administration, and operation of the plan;

(6) Ensure that the plan complies with the Internal Revenue Code, 26 U.S.C. § 401 et seq., the Employee Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et seq., and any other applicable federal or state law;

(7) Ensure that the plan satisfies the criteria for favorable federal and state tax-qualified treatment;

(8) Discharge the duties of the board with respect to plan solely in the interest of the plan participants;

(9) Maintain, invest, and reinvest the funds contributed into the plan consistent with the investment restrictions established by the board and the standard of care described in the prudent investor rule under § 24-2-610;

(10) In its discretion, increase or decrease the initial automatic default contribution rate to be paid by an eligible employee who elects to participate in the plan;

(11)(A) In its discretion, increase the contribution rate of each plan participant by no more than one percent (1%) of the annual salary and wages of the participant for each additional year the participant is employed or participating in the plan up to a maximum of ten percent (10%).

(B) An increase of the contribution rate of each plan participant shall apply to a participant by default or if the participant elects to increase his or her contribution; and

(12) Make and enter into a contract, agreement, or arrangement and to retain, employ, and contract for the services of financial institutions, depositories, consultants, broker dealers, investment advisors or managers, third-party plan administrators, and research, technical, and other services necessary or desirable for carrying out the purposes of the plan.

(c) A board member, plan administrator, and any other staff of the board shall not:

(1) Directly or indirectly have an interest in the making of an investment under the plan or in gains or profits that accrue from an

investment under the plan;

(2) Borrow any plan related funds or deposits, or use plan related funds or deposits in a manner that benefits:

(A) The board member, plan administrator, or a staff member of the board; or

(B) An agent or partner of the board member, plan administrator, or staff member of the board; or

(3) Become an endorser, surety, or obligor on an investment made under the plan.

11-16-108. Limitation on liability

(a) The Every Arkansan Retirement Plan Opportunity, the Every Arkansan Retirement Plan Opportunity Board and each of its members, and the state shall not:

(1) Insure any account or guarantee any rate of return or any interest rate on any contribution; or

(2) Be liable for any loss incurred by any person as a result of participating in the plan.

(b) An eligible employer, a participating employer, or other employer is not criminally or civilly liable for:

(1) The decision of an employee to participate or opt out of the plan;

(2) The decision of an employee to select an investment;

(3) An investment decision made by a participant or by the board;

(4) The design or performance of the plan; or

(5) Any benefit paid to a participant in the plan.

(c)(1) The debts, contracts and obligations of the plan or the board are not the debts, contracts, and obligations of the state.

(2) Neither the faith and credit or the taxing power of the state is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the plan or board.

11-16-109. Audits and annual reports.

(a) The Every Arkansan Retirement Plan Opportunity Board shall maintain an accurate account of the activities, operations, receipts, and

expenditures of the board, the Every Arkansan Retirement Plan Opportunity, and the trust for the plan.

(b) An annual full audit of the books and accounts of the board shall:

(1) Be conducted by a certified public accountant; and

(2) Include without limitation direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other person who is not a state employee for the administration of the plan.

(c) For the purpose of the audit, an auditor:

(1) Shall have access to the properties and records of the plan and board; and

(2) May prescribe accounting methods and the rendering of periodic reports in relation to projects undertaken by the plan.

(d) By August 1 of each year, the board shall submit to the Joint Interim Committee on Public Retirement and Social Security Programs a public report on the operation of the plan, trust, and activities of the board that includes:

(1) An audited financial report that is prepared in accordance with generally accepted accounting practices and details the activities, operations, receipts and expenditures of the plan and board during the preceding calendar year;

(2) A summary of the benefits provided by the plan;

(3) The number of plan participants;

(4) The names of each participating employer;

(5) The contribution formulas and amounts of contributions made by each plan participant and participating employer;

(6) The withdrawals, account balances, investments, investment returns, and fees and expenses associated with the investments and the administration of the plan;

(7) Projected activities of the plan for the current calendar year; and

(8) Any other information regarding the plan and its operations that the board might determine to provide.

11-16-110. Creation of the Every Arkansan Retirement Plan Opportunity Administrative Trust.

(a) There is created the Every Arkansan Retirement Plan Opportunity Administrative Trust.

(b) The co-trustees of the trust shall be the:

(1) Director of the Department of Finance and Administration;

(2) Executive Director of the Arkansas Public Employees' Retirement System; and

(3) Treasurer of State.

(c)(1) The Every Arkansan Retirement Plan Opportunity may collect application, account, or administrative fees to defray the cost of the plan.

(2) Fees collected under subdivision (c)(1) of this section shall be deposited into the trust.

(3) The Every Arkansan Retirement Plan Opportunity Board shall approve application, account, or administrative fees that may be collected under this subsection.

SECTION 2. DO NOT CODIFY. Initial appointment – Every Arkansan Retirement Plan Opportunity Board.

The Treasurer of State, President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall make the first appointments of members to the Every Arkansan Retirement Plan Opportunity Board within one hundred eighty (180) days of the effective date of this act.

SECTION 3. DO NOT CODIFY. Every Arkansan Retirement Plan Opportunity – Initial contributions.

(a)(1) The Every Arkansan Retirement Plan Opportunity Board shall establish the Every Arkansan Retirement Plan Opportunity so that an individual may begin making contributions to the plan no later than one (1) year after the effective date of this act.

(2) An individual shall not be permitted to contribute to the plan before the effective date of this act.

(b)(1) The board may phase in the plan so that the ability to contribute first applies on different dates for different classes of individuals, including employees of employers of different sizes or types and individuals who are not employees.

(2) The schedule for a phased-in implementation of the plan shall be substantially completed within one hundred and eighty (180) days of

the effective date of this act.

/s/Warren