

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

As Engrossed: H3/8/01

# A Bill

Act 1596 of 2001  
HOUSE BILL 2367

5 By: Representative R. Smith  
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## For An Act To Be Entitled

9 AN ACT TO AMEND TITLE 21, CHAPTER 5, SUBCHAPTER 5  
10 OF THE ARKANSAS CODE PERTAINING TO PUBLIC  
11 EMPLOYEES' DEFERRED COMPENSATION PROGRAMS TO  
12 ALLOW EMPLOYEES TO ELECT A VARIETY OF INVESTMENT  
13 OPTIONS; TO CONFORM PUBLIC EMPLOYEE DEFERRED  
14 COMPENSATION PLANS TO THE REQUIREMENTS OF IRC  
15 457; AND FOR OTHER PURPOSES.  
16

### Subtitle

17 AMENDS PUBLIC EMPLOYEE DEFERRED  
18 COMPENSATION PROVISIONS TO ALLOW  
19 FLEXIBILITY IN EMPLOYEE INVESTMENT  
20 OPTIONS AND CONFORM DEFERRED  
21 COMPENSATION LAW TO IRC 457.  
22  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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27 SECTION 1. Arkansas Code 21-5-504 is amended to read as follows:  
28 21-5-504. Authority of state or political subdivision.

29 (a) The state or any county, city, town, or other political  
30 subdivision may, by contract, agree with any employee to defer, in whole or  
31 in part, any portion of that employee's future compensation to a deferred  
32 compensation program.

33 ~~(b) (1) The state or political subdivision may subsequently, in its~~  
34 ~~sole discretion, contract for, purchase, or otherwise procure a fixed or~~  
35 ~~variable life insurance or annuity contract pursuant to a deferred~~  
36 ~~compensation program for the employee from any life insurance agent duly~~

1 ~~licensed by this state.~~ The administrator of the deferred compensation  
2 program may:

3 (A) Contract for, purchase or otherwise procure annuity  
4 contracts for the deferred compensation program; and

5 (B) Through a trust or custodian, contract for, purchase  
6 or otherwise procure fixed or variable life insurance contracts, mutual  
7 funds, pooled investment funds or such other investment vehicles that comply  
8 with state and federal laws and which permit the deferral of compensation for  
9 income tax purposes.

10 ~~(2) The agent must represent an insurance company licensed to~~  
11 ~~contract business in this state which offers life insurance and both fixed~~  
12 ~~and variable annuity contracts and which has signed a master agreement with~~  
13 ~~the administrator of the plan.~~

14 (2) If an annuity or life insurance contract is purchased, then  
15 it must be purchased from an insurance company licensed to contract business  
16 in this state and any insurance agent selling such contracts must be licensed  
17 by this state.

18  
19 SECTION 2. Arkansas Code 21-5-506 is amended to read as follows:  
20 21-5-506. Administration of programs.

21 (a)(1) The administration of the state government employees' deferred  
22 compensation program shall be under the direction of the Executive Director  
23 of the Employee Benefits Division of the Department of Finance and  
24 Administration.

25 (2) Administration of other deferred compensation programs  
26 authorized by this subchapter shall be under the direction of the appropriate  
27 officer designated by the county, city, town, or other political subdivision.

28 (b) ~~The department, or the appropriate officer designated by the~~  
29 ~~county, city, town, or other political subdivision,~~ administrator of the  
30 deferred compensation program is authorized and empowered to promulgate any  
31 and all regulations deemed necessary to carry out the intent and purposes of  
32 this subchapter.

33 (c) Deferrals of ~~income~~ compensation shall be made, in each instance,  
34 by the appropriate disbursing officer and shall be paid over to an annuity  
35 contract or to a trust or custodial account maintained for the deferred  
36 compensation program without unreasonable delay.

1 (d) The administrator of the deferred compensation program may  
 2 contract with a private corporation or institution for providing ~~consolidated~~  
 3 ~~billing and other administrative services~~ trust, custodial, investment,  
 4 record keeping, legal, accounting and other administrative services, and the  
 5 cost of such services may be paid from the assets of the deferred  
 6 compensation program.

7  
 8 SECTION 3. Arkansas Code 21-5-507 is amended to read as follows:

9 21-5-507. ~~Payment of premiums~~ Payments by administrator.

10 (a) Notwithstanding any other provision of law to the contrary, the  
 11 Executive Director of the Employee Benefits Division of the Department of  
 12 Finance and Administration or the appropriate officer of the county, city,  
 13 town, or other political subdivision designated to administer the deferred  
 14 compensation program, is authorized ~~to make payments of premiums for the~~  
 15 ~~purchase of fixed or variable life insurance or annuity contracts or any~~  
 16 ~~combination thereof under the deferred compensation program.:~~

17 (1) To make payments of premiums for the purchase of annuity  
 18 contracts under the deferred compensation program; and

19 (2) To make payments to a trustee or custodian holding fixed or  
 20 variable life insurance contracts, annuity contracts, mutual funds, pooled  
 21 investment funds, or other investment vehicles under the deferred  
 22 compensation program.

23 (b) The payments shall not be construed to be a prohibited use of the  
 24 general assets of the state, county, city, town, or other political  
 25 subdivi sion.

26  
 27 SECTION 4. Arkansas Code 21-5-509 is amended to read as follows:

28 21-5-509. ~~Forfeited benefits~~ Exclusive benefit.

29 ~~Any benefits forfeited by any state, county, city, town, or other~~  
 30 ~~political subdivision employee under a deferred compensation agreement shall~~  
 31 ~~become the property of the state, county, city, town, or other political~~  
 32 ~~subdivision and shall be treated as general revenues of the state, county,~~  
 33 ~~city, town, or other political subdivision.~~

34 All amounts of compensation deferred pursuant to a deferred  
 35 compensation program, all property and rights purchased with such amounts,  
 36 and income attributed to such amounts, property and rights, shall be held in

1 one or more annuity contracts, custodial accounts or in trust for the  
2 exclusive benefit of the employees and their beneficiaries participating in  
3 such program.

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5 SECTION 5. Arkansas Code 21-5-510 is amended to read as follows:

6 21-5-510. Liability of state or political subdivision.

7 The financial liability of the state, county, city, town, or other  
8 political subdivision under a deferred compensation program authorized by  
9 this subchapter shall be limited in each instance to:

10 (1) ~~a~~ An amount determined by reference to the value of the  
11 ~~particular contract~~ annuity contracts which may have been purchased with  
12 respect to any employee;

13 (2) An amount determined by reference to the value of the  
14 employee's interest in a trust or custodial account holding mutual funds, in  
15 pooled investment funds, or in other investment vehicles purchased on behalf  
16 of the employee; and

17 (3) ~~any~~ Any amounts deferred but not ~~expended in purchase of the~~  
18 paid over to such annuity contracts, trusts or custodial accounts.

19  
20 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the  
21 General Assembly that existing law concerning public employees' deferred  
22 compensation plans does not conform with the requirements of IRC § 457; that  
23 failure to comply with these requirements may result in unintended income tax  
24 liabilities for public employees; that existing law concerning public  
25 employees' deferred compensation plans currently provides few alternatives  
26 for investing deferred compensation; that additional investment alternatives  
27 are necessary to enable public employees to maximize their earnings from  
28 deferred compensation investments. Therefore, an emergency is declared to  
29 exist and this act being immediately necessary for the preservation of the  
30 public peace, health and safety shall become effective on the date of its  
31 approval by the Governor. If the bill is neither approved nor vetoed by the  
32 Governor, it shall become effective on the expiration of the period of time  
33 during which the Governor may veto the bill. If the bill is vetoed by the  
34 Governor and the veto is overridden, it shall become effective on the date  
35 the last house overrides the veto.

36 /s/ R. Smith

**APPROVED: 4/13/2001**