

**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

# A Bill

SENATE BILL 208

5 By: Senator Faris  
6 By: Representative R. Smith  
7  
8

## For An Act To Be Entitled

9  
10 AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE  
11 TITLE 24, CHAPTER 7 TO MAKE TECHNICAL CORRECTIONS TO  
12 THE ARKANSAS TEACHER RETIREMENT SYSTEM LAW TO COMPLY  
13 WITH THE FEDERAL INTERNAL REVENUE CODE OF 1986, AS  
14 AMENDED; TO DECLARE AN EMERGENCY; AND FOR OTHER  
15 PURPOSES.  
16

## Subtitle

17  
18 TO MAKE TECHNICAL CORRECTIONS TO THE  
19 ARKANSAS TEACHER RETIREMENT SYSTEM LAW  
20 TO COMPLY WITH FEDERAL TAX CODE.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code 24-7-202, concerning the definitions for the  
26 Arkansas Teacher Retirement System, is amended to add an additional  
27 subdivision to read as follows:

28 (31) "Code" means the federal Internal Revenue Code of 1986, as  
29 amended, as it existed on January 1, 2001.  
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31 SECTION 2. Arkansas Code Title 24, Chapter 7, Subchapter 2 is amended  
32 to add an additional section to read as follows:

33 24-7-210. Federal Taxation.

34 (a) The Executive Director of the Arkansas Teacher Retirement System is  
35 authorized and directed to operate the system and interpret any provisions of  
36 Title 24, Chapter 7 consistent with the requirements under the code and

1 applicable United States Treasury regulations necessary to permit the system  
 2 to be operated as a "qualified trust" under Section 401(a) of the Internal  
 3 Revenue Code, as it existed on January 1, 2001.

4 (b) Notwithstanding any language to the contrary set forth in this  
 5 chapter, the Board of Trustees shall have the authority to promulgate such  
 6 rules and regulations consistent with these directions.

7 (c) Any regulation promulgated under this section, that is found to be  
 8 in conflict with an applicable provision of the code is null and void.

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 10 SECTION 3. Arkansas Code 24-7-406(h), concerning employer pickup  
 11 contributions under the Teacher Retirement System, is amended to read as  
 12 follows:

13 (h)(1)(A) Each employer shall pay the member contributions required by  
 14 this section ~~for each~~ from the salary earned by a member after June 30, 1997,  
 15 and those contributions shall then be treated as employer contributions in  
 16 determining tax treatment under the provisions of the Internal Revenue Code  
 17 and the Income Tax Act of 1929, § 26-51-101 et seq.

18 (B) If a member elects to purchase past service credits  
 19 under § 24-7-602 through 24-7-607 through payroll deductions, the employer  
 20 shall pay the amount required to purchase such past service credits from the  
 21 employee's salary earned after the employee signs an irrevocable payroll  
 22 authorization prescribed by the board, and those purchases shall then be  
 23 treated as employer contributions in determining tax treatment under the  
 24 provisions of the Internal Revenue Code and the Income Tax Act of 1929,  
 25 beginning at § 26-51-101.

26 (2) Provided, however, each employer shall continue to withhold  
 27 federal and state income taxes based upon those contributions as income of the  
 28 member until the federal Internal Revenue Service or the federal courts rule  
 29 that, pursuant to Section 414(h) of the Internal Revenue Code, the  
 30 contributions shall not be included as gross income of the member until they  
 31 are distributed or made available to the member.

32 (3) The employer shall pay these member contributions from the  
 33 same source of funds used in paying the salary to the member. The employer may  
 34 pay these contributions by a reduction in the cash salary of the member, or by  
 35 a setoff against future salary increases, or by a combination of a reduction  
 36 in salary and a setoff against future salary increases.

1 (4) If member contributions are paid by the employer as provided  
 2 under this subsection, they shall be treated for all purposes of the Arkansas  
 3 Teacher Retirement System in the same manner and to the same extent possible  
 4 as member contributions made prior to the date the employer began payment of  
 5 the member's contributions hereunder.

6 (5) Whenever member contributions are required to be paid by the  
 7 employer under this subsection, the employee shall not have the option of  
 8 choosing to receive the contributed amounts directly instead of having them  
 9 paid by the employer.

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 11 SECTION 4. Arkansas Code Title 24, Chapter 7, Subchapter 7 is amended  
 12 to add additional sections to read as follows:

13 24-7-730. Required Distributions.

14 (a)(1) Notwithstanding the provisions of this subchapter regarding the  
 15 required dates of distribution of benefits under the Arkansas Teacher  
 16 Retirement System to former members, the distribution of a former member's  
 17 benefits under the system shall in any event be made or begun by April 1 of  
 18 the calendar year following the later of the calendar year in which the member  
 19 attains age seventy and one-half (70½) or the calendar year in which the  
 20 member retires.

21 (2) Distributions shall be made over the life of the member or  
 22 over the lives of the member and the member's designated beneficiary or over a  
 23 period not extending beyond the life expectancy of the member or the life  
 24 expectancy of the member and the member's designated beneficiary.

25 (b)(1) If the member dies after the distribution of benefits under the  
 26 system commences, the distribution of the benefits shall be continued in  
 27 accordance with the form of benefit in effect prior to the member's death.

28 (2)(A) If the member dies before the distribution of benefits  
 29 under the system commences, the entire death benefit, if any, due as a result  
 30 of the member's death, shall be distributed no later than five (5) years after  
 31 the member's death, except to the extent that a written election is made to  
 32 receive distributions in accordance with subdivisions (b)(2)(B) or (b)(2)(C)  
 33 of this section.

34 (B) If any portion of the member's benefit is payable to a  
 35 designated beneficiary, distributions shall be made in substantially equal  
 36 installments over the life or life expectancy of the designated beneficiary

1 commencing no later than one (1) year after the member's death.

2 (C) If the designated beneficiary is the member's surviving  
 3 spouse, the date distributions are required to begin in accordance with  
 4 subdivision (b)(2)(A) of this section shall not be earlier than the date on  
 5 which the member would have attained age seventy and one-half (70½), and, if  
 6 the spouse dies before payments begin, subsequent distributions shall be made  
 7 as if the spouse had been the member.

8 (D) Notwithstanding the provisions of this subchapter, all  
 9 distributions of benefits under the system shall comply with the requirements  
 10 of Section 401(a)(9) of the federal Internal Revenue Code, as it existed on  
 11 January 1, 2001, and the regulations thereunder, including United States  
 12 Treasury Regulation §1.401(a)(9)-2, and those provisions shall override any  
 13 distribution options in this chapter which are inconsistent with Section  
 14 401(a)(9).

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 16 24-7-731. Forfeitures.

17 Notwithstanding the provisions of this subchapter, any forfeitures  
 18 arising from severance of employment, death or for any other reason, shall not  
 19 be applied to increase the benefit any member would otherwise receive under  
 20 the Arkansas Teacher Retirement System at any time prior to the termination of  
 21 the system or the complete discontinuance of employer contributions  
 22 thereunder.

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 24 24-7-732. System termination or discontinuance.

25 Notwithstanding the provisions of this subchapter, members' accrued  
 26 benefits under the Arkansas Teacher Retirement System shall be one hundred  
 27 percent (100%) vested, to the extent those benefits are then funded, in the  
 28 event there is a partial or complete termination of the system, or in the  
 29 event of a complete discontinuance of employer contributions to the system.

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 31 24-7-733. Limitation on Benefits.

32 (a) Notwithstanding the provisions of this subchapter, benefits paid  
 33 under the Arkansas Teacher Retirement System shall not exceed the limitations  
 34 of Section 415 of the federal Internal Revenue Code, as it existed on January  
 35 1, 2001, that are applicable to governmental retirement plans, including, but  
 36 not limited to, the dollar limitations in Section 415(b)(1)(A).

1        (b) "Compensation" for purposes of determining Section 415 compliance  
 2 shall be defined as set forth in United States Treasury Regulation §1.415-  
 3 2(d)(2), as it existed on January 1, 2001 and shall include any elective  
 4 deferrals, as defined in Section 402(g)(3) of the federal Internal Revenue  
 5 Code as it existed on January 1, 2001, and any amount which is contributed or  
 6 deferred by a member's employer at the election of the member and which is not  
 7 includable in the gross income of the member by reasons of Section 125 or 457  
 8 of the federal Internal Revenue Code, as it existed on January 1, 2001.

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 10        24-7-734. Lost Payees.

11        (a)(1) Notwithstanding the provisions of this subchapter, each member  
 12 and each beneficiary of a deceased member shall file with the Board of  
 13 Trustees of the Arkansas Teacher Retirement System, from time to time in  
 14 writing, the post office address and each change of post office address of the  
 15 member or beneficiary.

16        (2) Any communication addressed to a member or beneficiary at the  
 17 last address filed with the board, or if no address has been filed, then at  
 18 the last address as indicated on the records of the employer of the member or  
 19 beneficiary, shall be binding on the member or beneficiary for all purposes of  
 20 the system, and neither the board nor the system shall be obligated to search  
 21 for or ascertain the whereabouts of any member or beneficiary.

22        (b)(1) If the board is unable, within five (5) years after payment of a  
 23 benefit is due to a member or beneficiary, to make such payment because it  
 24 cannot ascertain the whereabouts of the member or the identity and whereabouts  
 25 of the beneficiary or personal representative by mailing to the last known  
 26 address shown on the board's records, and neither the member, the beneficiary  
 27 or personal representative has made written claim therefor before the  
 28 expiration of the five (5) years, then, and in each case, the board shall  
 29 direct that the amount shall be forfeited.

30        (2) However, the amount shall be reinstated if and in the event  
 31 the said member or beneficiary or personal representative shall make a valid  
 32 claim therefor upon presentation of proper identification.

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 34        SECTION 5. Effective date. [THE ARKANSAS CODE REVISION COMMISSION IS  
 35 NOT REQUIRED TO CODIFY THIS SECTION.] This act applies retroactively to  
 36 January 1, 2001.

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SECTION 6. [THE ARKANSAS CODE REVISION COMMISSION IS NOT REQUIRED TO CODIFY THIS SECTION.] No benefit enhancement provided for by this act shall be implemented if it would cause the publicly supported retirement system's unfunded actuarial accrued liabilities to exceed a thirty (30) year amortization. No benefit enhancement provided for by this act shall be implemented by any publicly supported system which has unfunded actuarial accrued liabilities being amortized over a period exceeding thirty (30) years until the unfunded actuarial accrued liability is reduced to a level less than the standards prescribed by Arkansas Code, Title 24.

SECTION 7. Emergency Clause. It is found and determined by the General Assembly of the State of Arkansas that provisions of the Arkansas Teacher Retirement System Law need to be reconciled with federal tax laws; that these changes should take place retroactively to January 1, 2001; and that this act should have immediate effect. 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 the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.