

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

SENATE BILL 232

5 By: Senators J. Key, J. English, Rapert, B. Sample, R. Thompson  
6 By: Representatives Carnine, Catlett, Kerr  
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## For An Act To Be Entitled

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10 AN ACT TO REQUIRE AUTOMATIC ENROLLMENT OF A NEW STATE  
11 EMPLOYEE IN A DEFERRED COMPENSATION PLAN; TO PROVIDE  
12 OPT-OUT PROVISIONS FOR A NEW STATE EMPLOYEE; AND FOR  
13 OTHER PURPOSES.  
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## Subtitle

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17 TO REQUIRE AUTOMATIC ENROLLMENT OF A NEW  
18 STATE EMPLOYEE IN A DEFERRED COMPENSATION  
19 PLAN; AND TO PROVIDE OPT-OUT PROVISIONS  
20 FOR A NEW STATE EMPLOYEE.  
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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 § 21-5-504(a), regarding the requirement of  
26 an employee contract to defer compensation to a deferred compensation plan,  
27 is amended to read as follows:

28 (a)(1) The state or ~~any~~ a county, city, town, or other political  
29 subdivision may agree, by contract, with ~~any~~ an employee to defer, in whole  
30 or in part, ~~any~~ a portion of that employee's future compensation to a  
31 deferred compensation program.

32 (2)(A) The participation of an employee in the automatic  
33 enrollment in a deferred compensation plan under § 21-5-511 is a term of an  
34 employee's employment contract.

35 (B) A separate contract is not required to be executed for  
36 an employee to be enrolled in a deferred compensation plan under § 21-5-511.



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SECTION 2. Arkansas Code § 21-5-508 is amended to read as follows:  
21-5-508. Taxation of deferred income.

~~Any~~ A sum deferred under the deferred compensation program ~~shall is~~ not be subject to income taxation until a distribution is ~~actually~~ made to the employee or beneficiary unless an employee has by contract directed that his or her contribution is to be deposited into a Roth deferred compensation plan.

SECTION 3. Arkansas Code Title 21, Chapter 5, Subchapter 5, is amended to add an additional section to read as follows:

21-5-511. Automatic enrollment in deferred compensation plan – Legislative findings and purpose – Definitions.

(a) It is found and determined by the General Assembly that:

- (1) The average life expectancy in the United States is seventy-eight (78) years of age;
- (2) The average retirement age in the United States is sixty-four (64) years of age for men and sixty-two (62) years of age for women;
- (3) Longer life spans increase the need for income during the retirement years;
- (4) Arkansans should be encouraged to begin saving for their retirement early;
- (5) Deferred compensation plans are an important component of a total retirement benefits package;
- (6) Participation in a deferred compensation plan is important for Arkansans’ financial security in retirement; and
- (7) The General Assembly should encourage public employees to make a deferred compensation plan part of their retirement benefits package, supplemental to the benefits employees receive under a qualified trust retirement plan provided by the state or a county, city, town, or other political subdivision.

(b) As used in this section:

- (1) "Deferred compensation plan" means the Arkansas Diamond Deferred Compensation Plan or subsequent deferred compensation plan administered by the Executive Director of the Employee Benefits Division of the Department of Finance and Administration under this subchapter; and

1           (2) "Employee" means a person employed full time by a public  
 2 employer that participates in the Arkansas Diamond Deferred Compensation Plan  
 3 on or after January 1, 2014.

4           (c)(1) An employee beginning employment or reemployment on or after  
 5 January 1, 2014, in a position covered by the Arkansas Public Employees'  
 6 Retirement System shall be enrolled in the deferred compensation plan.

7           (2)(A) However, an employee may elect not to participate in the  
 8 deferred compensation plan within ninety (90) days of the employee's date of  
 9 hire.

10           (B)(i) If an employee elects not to participate in the  
 11 deferred compensation plan, the Executive Director of the Employee Benefits  
 12 Division of the Department of Finance and Administration shall refund to the  
 13 employee the balance of the employee's deferred compensation account.

14           (ii) In refunding the balance of an employee's  
 15 deferred compensation account under subdivision (c)(2)(B)(i) of this section,  
 16 the Executive Director of the Employee Benefits Division of the Department of  
 17 Finance and Administration shall follow procedures established by the  
 18 Director of the Department of Finance and Administration.

19           (d)(1) The amount of the contribution for an employee participating in  
 20 the deferred compensation plan under subdivision (c)(1) of this section is  
 21 three percent (3%) of the employee's annual compensation.

22           (2) An employee may elect to contribute an amount:

23           (A) Greater than the amount required under subdivision  
 24 (d)(1) of this section; or

25           (B) Less than the amount required under subdivision (d)(1)  
 26 of this section, but not less than one percent (1%).

27           (3)(A)(i) The Department of Finance and Administration shall  
 28 determine whether the amount of the contribution for an employee  
 29 participating in the deferred compensation plan under subdivision (c)(1) of  
 30 this section in the amount of three percent (3%) of the employee's annual  
 31 compensation is permitted under the:

32                   (a) Federal minimum wage law; and

33                   (b) Internal Revenue Code section setting the  
 34 amount of annual compensation that may be contributed to a deferred  
 35 compensation plan.

36           (ii) If the Department of Finance and Administration

1 determines under subdivision (3)(A)(i)(a) or subdivision (3)(A)(i)(b) of this  
2 section that an employee's contribution of three percent (3%) of the  
3 employee's annual salary is not permitted, then the Department of Finance and  
4 Administration shall set the employee's permitted rate of contribution to the  
5 deferred compensation plan.

6 (B) Subdivision (d)(3)(A) of this section does not  
7 prohibit an employee by contract with the Employee Benefits Division of the  
8 Department of Finance and Administration to make a contribution to the  
9 deferred compensation plan that would make the employee's compensation for a  
10 pay period less than the federal minimum wage.

11 (e)(1) The employee's contribution to the deferred compensation plan  
12 may be allocated to the investment option chosen by the Department of Finance  
13 and Administration if the employee fails to direct how the contribution  
14 should be invested.

15 (2) The Department of Finance and Administration shall not put  
16 the employee's contribution in a Roth deferred compensation plan unless  
17 directed by the employee by contract with the division.

18 (f)(1) The employer shall provide written notice to each employee  
19 subject to this section.

20 (2) The notice provided under this subsection shall:

21 (A) Be provided to the employee on the employee's first  
22 day of work;

23 (B) State the following:

24 (i) The purposes of the deferred compensation plan;

25 (ii) That the employee may elect not to participate  
26 in the deferred compensation plan but is required to do so within ninety (90)  
27 days of the employee's date of hire;

28 (iii) The procedure for notifying the division:

29 (a) If the employee elects not to participate  
30 in the deferred compensation plan; and

31 (b) Of the investment option under the  
32 deferred compensation plan selected by the employee;

33 (iv) The tax consequences of enrolling in the  
34 deferred compensation plan; and

35 (v) The amount of the employee's contribution to the  
36 deferred compensation plan per pay period; and

1                    (C) List the telephone number, mailing address, and email  
2 address of the Executive Director of the Employee Benefits Division of the  
3 Department of Finance and Administration.

4                    (g) An employee's participation in the deferred compensation plan  
5 under this section is supplemental to all other retirement, pension, and  
6 benefit systems as stated in § 21-5-503.

7                    (h) The Director of the Department of Finance and Administration shall  
8 promulgate rules to:

9                    (1) Implement this section; and

10                   (2) Comply with federal law to:

11                    (A) Maintain the deferred compensation plan's tax  
12 qualification status by the federal government to remain tax exempt and tax  
13 qualified; and

14                    (B) Protect an employee's deferred compensation plan  
15 account.

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17                    SECTION 4. EFFECTIVE DATE. This act is effective on and after January  
18 1, 2014.