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2 89th General Assembly
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4

As Engrossed: S2/5/13

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

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

16 TO REQUIRE AUTOMATIC ENROLLMENT OF A NEW
17 STATE EMPLOYEE IN A DEFERRED COMPENSATION
18 PLAN; AND TO PROVIDE OPT-OUT PROVISIONS
19 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, shall be enrolled in the deferred compensation plan.

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

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

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

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

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

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

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

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

31 (a) Federal minimum wage law; and

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

35 (ii) If the Department of Finance and Administration
36 determines under subdivision (3)(A)(i)(a) or subdivision (3)(A)(i)(b) of this

1 section that an employee's contribution of three percent (3%) of the
2 employee's annual salary is not permitted, then the Department of Finance and
3 Administration shall set the employee's permitted rate of contribution to the
4 deferred compensation plan.

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

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

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

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

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

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

22 (B) State the following:

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

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

27 (iii) The procedure for notifying the division:

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

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

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

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

36 (C) List the telephone number, mailing address, and email

1 address of the Employee Benefits Division of the Department of Finance and
2 Administration.

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

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

8 (1) Implement this section; and

9 (2) Comply with federal law to:

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

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

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

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19 /s/J. Key
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