

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

1 State of Arkansas As Engrossed: H3/14/19 H3/18/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

HOUSE BILL 1295

4

5 By: Representatives Warren, Capp, Coleman, Dalby, Deffenbaugh, Eubanks, M. Gray, G. Hodges,

6 Maddox, Scott, Slape, Wing

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

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## For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE EVERY ARKANSAN RETIREMENT

11 PLAN OPPORTUNITY ACT; AND FOR OTHER PURPOSES.

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## Subtitle

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TO ESTABLISH THE EVERY ARKANSAN

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RETIREMENT PLAN OPPORTUNITY ACT.

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

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21 SECTION 1. Arkansas Code Title 11 is amended to add an additional

22 chapter to read as follows:

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### CHAPTER 16

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### EVERY ARKANSAN RETIREMENT PLAN OPPORTUNITY

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#### 11-16-101. Title.

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

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Opportunity Act".

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#### 11-16-102. Findings.

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The General Assembly finds that:

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

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

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

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

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

11 (A) Enhance the retirement security of these households;

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

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

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

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

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26 11-16-103. Creation.

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

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30 11-16-104. Definitions.

31 As used in this chapter:

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

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

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

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

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

3 (i) Covered under the Railway Labor Act, 45 U.S.C. §  
4 151 et seq.;

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

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

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

12 (B) "Eligible employer" does not include:

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

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

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

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

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

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

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

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

33 (A) Is self-employed;

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

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

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

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

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

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12           11-16-105. Every Arkansan Retirement Plan Opportunity – Plan  
13 requirements.

14           (a) The Every Arkansan Retirement Plan Opportunity shall be treated as  
15 single plan under Title 1 of the Employee Retirement Income Security Act of  
16 1974, 29 C.F.R. § 2509 et seq., and as described in 26 U.S.C. §§ 401(a),  
17 401(k), and 413(c).

18           (b) The Every Arkansan Retirement Plan Opportunity shall:

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

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

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

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

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

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

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

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

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

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

5 (10) Allow voluntary employer contributions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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10 11-16-106. Every Arkansan Retirement Plan Opportunity Board – Creation  
11 – Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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19 11-16-107. Every Arkansan Retirement Plan Opportunity Board – Powers,  
20 authority, and duties.

21 (a) The Every Arkansan Retirement Plan Opportunity Board:

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

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

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

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

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

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

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

1 assets;

2 (4) Develop and disseminate educational information;

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

5 (6) Ensure that the plan complies with the Internal Revenue  
6 Code, 26 U.S.C. § 401 et seq., the Employee Retirement Income Security Act of  
7 1974, 29 C.F.R. § 2509 et seq., and any other applicable federal or state  
8 law;

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

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

13 (9) Maintain, invest, and reinvest the funds contributed into  
14 the plan consistent with the investment restrictions established by the board  
15 and the standard of care described in the prudent investor rule under § 24-2-  
16 610;

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

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

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

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

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

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

1 investment under the plan;

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

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

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

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

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11 11-16-108. Limitation on liability

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

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

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

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

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

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

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

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

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

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

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

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34 11-16-109. Audits and annual reports.

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

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

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

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

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

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

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

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

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

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

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

23 (3) The number of plan participants;

24 (4) The names of each participating employer;

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

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

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

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

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35 11-16-110. Creation of the Every Arkansan Retirement Plan Opportunity  
36 Administrative Trust.

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

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

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

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

7 (3) Treasurer of State.

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

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

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

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

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

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

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

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

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

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

1 the effective date of this act.

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/s/Warren

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