

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

HOUSE BILL 1349

4
5 By: Representatives Warren, F. Allen, Barker, Boyd, Brooks, Christiansen, Coleman, A. Collins, Cozart,
6 Crawford, Dalby, Deffenbaugh, Eubanks, Evans, C. Fite, L. Fite, Gazaway, Godfrey, M. Gray, Holcomb,
7 Hollowell, Jett, L. Johnson, Lundstrum, Maddox, McClure, M. McElroy, McGrew, McNair, S. Meeks,
8 Milligan, Perry, Richardson, Rye, Slape, S. Smith, Vaught, Wardlaw, Watson, Wing
9 By: Senators K. Hammer, Caldwell, L. Chesterfield, L. Eads, K. Ingram, Irvin, M. Johnson, G. Leding, B.
10 Sample, G. Stubblefield, J. Sturch, Teague, D. Wallace

For An Act To Be Entitled

11
12 AN ACT TO ESTABLISH THE EVERY ARKANSAN RETIREMENT
13 PLAN OPPORTUNITY ACT; AND FOR OTHER PURPOSES.
14

Subtitle

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16
17 TO ESTABLISH THE EVERY ARKANSAN
18 RETIREMENT PLAN OPPORTUNITY ACT.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 11 is amended to add an additional
25 chapter to read as follows:
26

CHAPTER 16

EVERY ARKANSAN RETIREMENT PLAN OPPORTUNITY

11-16-101. Title.

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31 This chapter shall be known and may be cited as the “Every Arkansan
32 Retirement Plan Opportunity Act”.
33

11-16-102. Findings.

34
35 The General Assembly finds that:

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



1 have inadequate retirement savings;

2 (2) An estimated five hundred thirty thousand (530,000) private
 3 sector workers, including employees of private sector employers, independent
 4 contractors, and the self-employed, do not have access to an employer-
 5 sponsored retirement plan or program, or another method of saving at work;

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

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

14 (A) Enhance the retirement security of households in this
 15 state;

16 (B) Reduce reliance on public assistance programs offered
 17 by the state; and

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

20 (5) The Arkansas 529 GIFT Plan demonstrates the feasibility of a
 21 public-private partnership that outsources investment and administration to
 22 assist the citizens of this state in saving on a voluntary and cost-efficient
 23 basis; and

24 (6) The General Assembly intends to establish the "Every
 25 Arkansan Retirement Plan Opportunity" which will use the services of
 26 competent and qualified private-sector entities that are selected by the
 27 "Every Arkansan Retirement Plan Opportunity Board" to operate, administer,
 28 manage, and oversee the plan on behalf of the participants.

29
 30 11-16-103. Creation.

31 A multipleemployer voluntary retirement savings plan that shall be
 32 known and may be cited as the "Every Arkansan Retirement Plan Opportunity" is
 33 established.

34
 35 11-16-104. Definitions.

36 As used in this chapter:

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

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

4 (ii) Earns a wage or other compensation in the State
5 of Arkansas; and

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

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

8 (i) Covered under the Railway Labor Act, 45 U.S.C. §
9 151 et seq., as it existed on January 1, 2021;

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

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

14 (2)(A) "Eligible employer" means a person or entity that is
15 engaged in a business, industry, profession, trade, or other enterprise in
16 Arkansas, whether for profit or nonprofit.

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

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

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

23 (b) An employer is not an eligible employer if
24 the employer:

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

28 (2) Adopts a specified tax-favored
29 retirement plan that is effective for the remaining portion of the calendar
30 year in which the employer did not maintain a specified tax-favored
31 retirement plan;

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

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

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

2 (A) Is self-employed;

3 (B) Has self-employment income or other compensation from
 4 self-employment that is allocable to this state; and

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

6 (6) "Specified tax-favored retirement plan" means a retirement
 7 plan that is tax-qualified under or is described in and satisfies the
 8 requirements of 26 U.S.C. §§ 401, 403(b), 408(k), or 408(p), as they existed
 9 on January 1, 2021;

10 (7) "Total fees and expenses" means all fees, costs, and
 11 expenses of the plan, including without limitation administrative expenses,
 12 investment expenses, investment advice expenses, accounting costs, actuarial
 13 costs, legal costs, marketing expenses, education expenses, trading costs,
 14 insurance annuitization costs, and other miscellaneous costs; and

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

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 18 11-16-105. Every Arkansan Retirement Plan Opportunity – Plan
 19 requirements.

20 (a) The Every Arkansan Retirement Plan Opportunity shall be treated as
 21 a single plan under Title 1 of the Employee Retirement Income Security Act of
 22 1974, 29 C.F.R. § 2509 et seq., and as described in 26 U.S.C. §§ 401(a),
 23 401(k), and 413(c), as they existed on January 1, 2021.

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

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

27 (2) Be set out in a document that describes the terms and
 28 conditions of the Every Arkansan Retirement Plan Opportunity;

29 (3) Be designed and implemented in a manner that is consistent
 30 with applicable federal and state law;

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

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

36 (6) Provide that after a participating employer provides written

1 notice to an eligible employee, the participating employer shall
2 automatically enroll an eligible employee who elects to participate in the
3 Every Arkansan Retirement Plan Opportunity unless the eligible employee opts
4 out of the Every Arkansan Retirement Plan Opportunity;

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

7 (8) Provide a plan participant with the option to terminate his
8 or her participation in the Every Arkansan Retirement Plan Opportunity at any
9 time;

10 (9) Permit voluntary pre-tax or Roth 401k deferrals by an
11 eligible employee in accordance with federal law;

12 (10) Prohibit contributions to the Every Arkansan Retirement
13 Plan Opportunity that:

14 (A) Are rolled over from one (1) or more savings accounts
15 by a participant; and

16 (B) Exceed a combined total of seventy-five thousand
17 dollars (\$75,000);

18 (11) Allow voluntary employer contributions;

19 (12) Require an eligible employee to automatically contribute
20 five percent (5%) of his or her salary to the Every Arkansan Retirement Plan
21 Opportunity unless the eligible employee elects to:

22 (A) Opt out of the Every Arkansan Retirement Plan
23 Opportunity; or

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

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

28 (14) Provide for the direct deposit of contributions into
29 investments under the Every Arkansan Retirement Plan Opportunity;

30 (15) In a manner that is consistent with the Employee Retirement
31 Income Security Act of 1974, 29 C.F.R. § 2509 et seq., as it existed on
32 January 1, 2021, and other federal law, provide for the automatic investment
33 of a participant's contributions if the participant does not elect a
34 particular investment option;

35 (16) Provide quarterly reports on the status of each
36 participant's account to the participant;

1 has skill, knowledge, and experience in the field of retirement savings and
2 investment;

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

5 (4) The Secretary of the Department of Finance and
6 Administration or his or her designee;

7 (5) The Executive Director of the Arkansas Public Employees'
8 Retirement System or his or her designee;

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

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

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

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

18 (3)(A) The appropriate appointing authority shall appoint a
19 representative to fill a vacancy on the board within thirty (30) days of the
20 date on which the vacancy occurs.

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

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

25 (e)(1) Each member of the board who is a voting member of the board
26 shall have one (1) vote on each question before the board.

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

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

33 (f) The Treasurer of State or his or her designee shall serve as the
34 Chair of the Every Arkansas Retirement Plan Opportunity Board.

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

36

1 11-16-107. Every Arkansan Retirement Plan Opportunity Board – Powers,
2 authority, and duties.

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

4 (1) Shall be the sponsor of the Every Arkansan Retirement Plan
5 Opportunity under the Employee Retirement Income Security Act of 1974, 29
6 C.F.R. § 2509 et seq., as it existed on January 1, 2021;

7 (2) Shall develop and implement the Every Arkansan Retirement
8 Plan Opportunity; and

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

11 (b) The members of the board shall be fiduciaries of the plan under
12 the Employee Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et
13 seq., as it existed on January 1, 2021, and shall have the power, authority,
14 and duty to:

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

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

19 (3) Arrange for the collective, common, and pooled investment of
20 assets;

21 (4) Develop and disseminate educational information;

22 (5) Adopt rules necessary for the implementation,
23 administration, and operation of the plan;

24 (6) Ensure that the plan complies with the Internal Revenue
25 Code, 26 U.S.C. § 401 et seq., as it existed on January 1, 2021, the Employee
26 Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et seq., as it
27 existed on January 1, 2021, and any other applicable federal or state law;

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

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

32 (9) Maintain, invest, and reinvest the funds contributed into
33 the plan consistent with the investment restrictions established by the board
34 and the standard of care described in the prudent investor rule under § 24-2-
35 610;

36 (10) In the board's discretion, increase or decrease the initial

1 automatic default contribution rate to be paid by an eligible employee who
2 elects to participate in the plan;

3 (11)(A) In the board's discretion, increase the contribution
4 rate of each participant by no more than one percent (1%) of the annual
5 salary and wages of the participant for each additional year the participant
6 is employed or participating in the plan up to a maximum of ten percent
7 (10%).

8 (B) An increase of the contribution rate of each
9 participant shall apply to a participant by default or if the participant
10 elects to increase his or her contribution; and

11 (12) Make and enter into a contract, agreement, or arrangement
12 and to retain, employ, and contract for the services of financial
13 institutions, depositories, consultants, broker dealers, investment advisors
14 or managers, third-party plan administrators, and research, technical, and
15 other services necessary or desirable for carrying out the purposes of the
16 plan.

17 (c) A board member, plan administrator, or any other staff of the
18 board shall not:

19 (1) Directly or indirectly have an interest in the making of an
20 investment under the plan or in gains or profits that accrue from an
21 investment under the plan;

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

24 (A) The board member, plan administrator, or a staff
25 member of the board; or

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

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

30
31 11-16-108. Limitation on liability.

32 (a) The Every Arkansan Retirement Plan Opportunity, the Every Arkansan
33 Retirement Plan Opportunity Board and each of its members, and the state
34 shall not:

35 (1) Insure an account or guarantee a rate of return or an
36 interest rate on a contribution; or

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

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

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

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

8 (3) An investment decision made by a participant or by the
 9 board;

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

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

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

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

17
 18 11-16-109. Audits and annual reports.

19 (a) The Every Arkansan Retirement Plan Opportunity Board shall
 20 maintain an accurate account of the activities, operations, receipts, and
 21 expenditures of the board, the Every Arkansan Retirement Plan Opportunity,
 22 and the Every Arkansan Retirement Plan Opportunity Administrative Trust.

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

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

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

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

30 (1) Shall have access to the properties and records of the plan
 31 and board; and

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

34 (d) By August 1 of each year, the board shall submit to the Joint
 35 Interim Committee on Public Retirement and Social Security Programs a public
 36 report on the operation of the plan, trust, and activities of the board that

1 includes:

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

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

7 (3) The number of participants;

8 (4) The names of each participating employer;

9 (5) The contribution formulas and amounts of contributions made
 10 by each participant and participating employer;

11 (6) The withdrawals, account balances, investments, investment
 12 returns, and total fees and expenses associated with the investments and the
 13 administration of the plan;

14 (7) Projected activities of the plan for the current calendar
 15 year; and

16 (8) Any other information regarding the plan and its operations
 17 that the board may decide to provide.

18
 19 11-16-110. Every Arkansan Retirement Plan Opportunity Administrative
 20 Trust – Creation.

21 (a) There is created the Every Arkansan Retirement Plan Opportunity
 22 Administrative Trust.

23 (b) The cotrustees of the trust shall be the:

24 (1) Secretary of the Department of Finance and Administration;

25 (2) Executive Director of the Arkansas Public Employees’
 26 Retirement System; and

27 (3) Treasurer of State.

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

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

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

35
 36 SECTION 2. DO NOT CODIFY. Initial appointment – Every Arkansan

1 Retirement Plan Opportunity Board.

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

6
 7 SECTION 3. DO NOT CODIFY. Every Arkansan Retirement Plan Opportunity
 8 - Initial contributions.

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

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

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

19 (2) The schedule for a phased-in implementation of the plan
 20 shall be substantially completed within one hundred and eighty (180) days of
 21 the effective date of this act.

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