

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

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

*As Engrossed: H3/9/21*

# A Bill

HOUSE BILL 1349

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

15  
16  
17 TO ESTABLISH THE EVERY ARKANSAN  
18 RETIREMENT PLAN OPPORTUNITY ACT.  
19  
20  
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.

30  
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;

3 (ii)(a) Meets the service requirements of the plan  
4 documentation.

5 (b) The service requirements of the plan  
6 documentation shall comply with federal and state law;

7 (iii) Earns a wage or other compensation paid by a  
8 participating employer in the State of Arkansas; and

9 (iv) Is at least eighteen (18) years of age.

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

11 (i) Covered under the Railway Labor Act, 45 U.S.C. §  
12 151 et seq., as it existed on January 1, 2021;

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

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

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

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

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

23 (ii) An employer that maintains or has maintained  
24 within the most current preceding two (2) years a Specified Tax-Favored  
25 Retirement Plan for its employees;

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

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

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

32 (A) Is self-employed;

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

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

36 (6) "Specified tax-favored retirement plan" means a retirement

1 plan that is tax-qualified under or is described in and satisfies the  
2 requirements of 26 U.S.C. §§ 401, 403(b), 408(k), or 408(p), as they existed  
3 on January 1, 2021;

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

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

11  
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 a 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), as they existed on January 1, 2021.

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 out in a document that describes the terms and  
22 conditions of the Every Arkansan Retirement Plan Opportunity;

23 (3) Be designed and implemented 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) Provide that after a participating employer provides written  
31 notice to an eligible employee, the participating employer shall  
32 automatically enroll an eligible employee who elects to participate in the  
33 Every Arkansan Retirement Plan Opportunity unless the eligible employee opts  
34 out of the Every Arkansan Retirement Plan Opportunity;

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

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

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

6 (10) Prohibit an initial contribution to the Every Arkansas  
7 Retirement Plan Opportunity that:

8 (A) Is rolled over from one (1) or more savings accounts  
9 by a participant; and

10 (B) Exceeds a combined total of seventy-five thousand  
11 dollars (\$75,000) ;

12 (11) Allow voluntary employer contributions;

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

16 (A) Opt out of the Every Arkansan Retirement Plan  
17 Opportunity; or

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

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

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

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

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

31 (17) When necessary and feasible, use existing employer and  
32 public infrastructure to facilitate contributions, recordkeeping, and  
33 outreach and use pooled or collective investment arrangements;

34 (18) Provide that each participant who is one hundred (100%)  
35 percent vested in the Every Arkansan Retirement Plan Opportunity owns the  
36 contributions to or earnings on the amounts contributed to his or her account

1 under the Every Arkansan Retirement Plan Opportunity;

2 (19) Provide that the state and employers do not have a  
3 proprietary interest in the contributions owned by a participant or in the  
4 earnings on the amounts contributed that are owned by a participant;

5 (20) Make provisions for participation in the Every Arkansan  
6 Retirement Plan Opportunity by an individual who is self-employed;

7 (21) After a three-year start-up period of the Every Arkansan  
8 Retirement Plan Opportunity that begins with the initial implementation of  
9 the plan, keep total fees and expenses below three-fourths of one percent  
10 (0.75%) of the total assets of the Every Arkansan Retirement Plan  
11 Opportunity;

12 (22) Require a participating employer that accumulates assets  
13 valued at a combined total of six-hundred thousand dollars (\$600,000) in the  
14 Every Arkansan Retirement Plan Opportunity to withdraw as a participating  
15 employer and employ a private organization to manage the accumulated assets;

16 (23) Establish rules and procedures that govern the distribution  
17 of funds in the Every Arkansan Retirement Plan Opportunity Administrative  
18 Trust and promote the portability of benefits; and

19 (24) Encourage employers to adopt a specified tax-favored  
20 retirement plan, including the Every Arkansan Retirement Plan Opportunity.

21  
22 11-16-106. Every Arkansan Retirement Plan Opportunity Board – Creation  
23 – Members.

24 (a) The Every Arkansan Retirement Plan Opportunity Board is  
25 established in the office of the Treasurer of State.

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

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

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

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

33 (3) An individual who is appointed by the Governor and has  
34 skill, knowledge, and experience in small business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30  
31           11-16-107. Every Arkansan Retirement Plan Opportunity Board – Powers,  
32 authority, and duties.

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

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

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

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

5           (b) Each member of the board or his or her designee shall be  
6 fiduciaries of the plan under the Employee Retirement Income Security Act of  
7 1974, 29 C.F.R. § 2509 et seq., as it existed on January 1, 2021, and shall  
8 have the power, authority, and duty to:

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

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

13          (3) Arrange for the collective, common, and pooled investment of  
14 assets;

15          (4) Develop and disseminate educational information;

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

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

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

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

26          (9) Maintain, invest, and reinvest the funds contributed into  
27 the plan consistent with the investment restrictions established by the board  
28 and the standard of care described in the prudent investor rule under the  
29 Employment Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et seq.;

30          (10) In the board's discretion, increase or decrease the initial  
31 automatic default contribution rate to be paid by an eligible employee who  
32 elects to participate in the plan;

33          (11)(A) In the board's discretion, increase the contribution  
34 rate of each participant by no more than one percent (1%) of the annual  
35 salary and wages of the participant for each additional year the participant  
36 is employed or participating in the plan up to a maximum of ten percent



1 (10%).

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

5 (12) Make and enter into a contract, agreement, or arrangement  
6 and to retain, employ, and contract for the services of financial  
7 institutions, depositories, consultants, broker dealers, investment advisors  
8 or managers, third-party plan administrators, and research, technical, and  
9 other services necessary or desirable for carrying out the purposes of the  
10 plan.

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

13 (1) Directly or indirectly have an interest in the making of an  
14 investment under the plan or in gains or profits that accrue from an  
15 investment under the plan;

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

18 (A) The board member, plan administrator, or a staff  
19 member of the board; or

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

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

24  
25 11-16-108. Limitation on liability.

26 (a) The Every Arkansan Retirement Plan Opportunity, the Every Arkansan  
27 Retirement Plan Opportunity Board and each of its members, and the state  
28 shall not:

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

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

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

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

- 1           (2) The decision of an employee to select an investment;  
2           (3) An investment decision made by a participant or by the  
3 board;  
4           (4) The design or performance of the plan; or  
5           (5) Any benefit paid to a participant in the plan.

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

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

11  
12           11-16-109. Audits and annual reports.

13           (a) The Every Arkansan Retirement Plan Opportunity Board shall  
14 maintain an accurate account of the activities, operations, receipts, and  
15 expenditures of the board, the Every Arkansan Retirement Plan Opportunity,  
16 and the Every Arkansan Retirement Plan Opportunity Administrative Trust.

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

- 18           (1) Be conducted by a certified public accountant; and  
19           (2) Include without limitation direct and indirect costs  
20 attributable to the use of outside consultants, independent contractors, and  
21 any other person who is not a state employee for the administration of the  
22 plan.

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

- 24           (1) Shall have access to the properties and records of the plan  
25 and board; and  
26           (2) May prescribe accounting methods and the rendering of  
27 periodic reports in relation to projects undertaken by the plan.

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

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

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

1 (3) The number of participants;

2 (4) The names of each participating employer;

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

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

8 (7) Projected activities of the plan for the current calendar  
9 year; and

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

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13 11-16-110. Every Arkansan Retirement Plan Opportunity Administrative  
14 Trust – Creation.

15 (a) There is created the Every Arkansan Retirement Plan Opportunity  
16 Administrative Trust.

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

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

19 (2) Executive Director of the Arkansas Public Employees'  
20 Retirement System; and

21 (3) Treasurer of State.

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

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

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

29  
30 SECTION 2. DO NOT CODIFY. Initial appointment – Every Arkansan  
31 Retirement Plan Opportunity Board.

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

36

1 SECTION 3. DO NOT CODIFY. Every Arkansan Retirement Plan Opportunity  
2 - Initial contributions.

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

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

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

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

16  
17 /s/Warren  
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