

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

State of Arkansas      *As Engrossed: S2/20/19 S3/13/19 S4/2/19*  
92nd General Assembly      **A Bill**  
Regular Session, 2019

SENATE BILL 238

By: Senators M. Johnson, G. Stubblefield, Caldwell, B. Ballinger, Bledsoe, E. Cheatham, B. Davis, L. Eads, J. English, Flippo, T. Garner, K. Hammer, Hester, G. Leding, D. Wallace, *J. Hendren, Bond, Irvin, K. Ingram*

By: Representatives G. Hodges, Sullivan, Lowery, Beck, Bentley, Boyd, A. Davis, L. Fite, Lundstrum, McCollum, Richmond, Womack, *J. Mayberry, Blake, Burch, Cavanaugh, V. Flowers, D. Whitaker*

### **For An Act To Be Entitled**

AN ACT TO PROVIDE FOR INELIGIBILITY FOR *CERTAIN RETIREMENT* BENEFITS UPON CONVICTION OF A FELONY ARISING OUT OF AN ELECTED PUBLIC OFFICIAL'S OFFICIAL ACTIONS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### **Subtitle**

*TO PROVIDE FOR INELIGIBILITY FOR CERTAIN RETIREMENT BENEFITS UPON CONVICTION OF A FELONY ARISING OUT OF AN ELECTED PUBLIC OFFICIAL'S OFFICIAL ACTIONS; AND TO DECLARE AN EMERGENCY.*

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

*SECTION 1. Arkansas Code § 24-1-301 is amended to read as follows:  
24-1-301. Definitions.*

*As used in this subchapter:*

*(1) "Beneficiary" means an individual who receives or is designated by a member or retirant to receive a plan benefit under a retirement system; ~~and~~*

*(2) "Elected public official" means a person elected or appointed to one (1) or more of the following offices:*



- (A) Governor;
- (B) Lieutenant Governor;
- (C) Attorney General;
- (D) Secretary of State;
- (E) Treasurer of State;
- (F) Auditor of State;
- (G) Commissioner of State Lands;
- (H) A member of the Senate; or
- (I) A member of the House of Representatives; and

~~(2)~~(3) "Retirement system" means:

- (A) The Arkansas Teacher Retirement System, established by the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;
- (B) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;
- (C) The Arkansas Public Employees' Retirement System, established by § 24-4-103;
- (D) The State Police Retirement System, established by § 24-6-203;
- (E) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;
- (F) An alternate retirement plan for:
  - (i) A college, university, or the Department of Higher Education provided for under § 24-7-801 et seq.; and
  - (ii) A vocational-technical school or the Department of Career Education provided for under § 24-7-901 et seq.;
- (G) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.; and
- (H) A firemen's relief and pension fund or a policemen's pension and relief fund provided for under § 24-11-101 et seq.

SECTION 2. Arkansas Code Title 24, Chapter 1, Subchapter 3, is amended to add an additional section to read as follows:

24-1-306. Elected public officials – Ineligibility for certain retirement benefits upon conviction of felony arising out of official actions.

(a) As used in this section, "felony" means a felony offense arising

under a law governing:

(1) Abuse of public trust;

(2) Abuse of office; or

(3) Fraud.

(b)(1) A current or former elected public official shall forfeit his or her credited service in the Arkansas Public Employees' Retirement System for his or her term of office as an elected public official if he or she:

(A) Is convicted in a state or federal court of a felony arising out of that person's official actions while serving as an elected public official; or

(B) Pleads guilty or nolo contendere in a state or federal court to a felony arising out of that person's official actions while serving as an elected public official.

(2) The credited service forfeited under subdivision (b)(1) of this section includes all credited service in the Arkansas Public Employees' Retirement System earned as an elected public official, irrespective of the elected public office held when performing the official actions from which the felony arose.

(c)(1) Each time a person is elected, re-elected, or appointed as an elected public official, as a condition of his or her election or appointment, he or she shall be deemed to consent and agree to the forfeiture of his or her credited service in the Arkansas Public Employees' Retirement System for his or her term of office as an elected public official if the person:

(A) Is convicted in a state or federal court of a felony arising out of that person's official actions while serving as an elected public official; or

(B) Pleads guilty or nolo contendere in a state or federal court to a felony arising out of that person's official actions while serving as an elected public official.

(2) Subdivision (c)(1) of this section applies to an elected public official regardless of the date the person originally became a member of the Arkansas Public Employees' Retirement System.

(d) The clerk of the court in which a proceeding against the current or former elected public official is being conducted shall send written notice by certified mail, return receipt requested, to the Executive Director

of the Arkansas Public Employees' Retirement System when:

(1) A current or former elected public official is convicted of or pleads guilty or nolo contendere to a felony arising out of that person's official actions while serving as an elected public official;

(2) A current or former elected public official appeals his or her conviction of or plea of guilty or nolo contendere to a felony arising out of that person's official actions while serving as an elected public official; and

(3) The appellate court issues a final ruling upholding or reversing the conviction or plea of guilty or nolo contendere of the current or former elected public official for a felony arising out of that person's official actions while serving as an elected public official.

(e) Upon the final determination of a conviction or plea under subsection (b) of this section, including without limitation the final resolution of an appeal that upholds the conviction or plea, the Arkansas Public Employees' Retirement System shall:

(1) Have the current or former elected public official's annuity:

(A) Stopped immediately, if the current or former elected public official is receiving an annuity that is based solely upon his or her term of office as an elected public official; or

(B) Reduced by the amount of the annuity attributable to his or her term of office as an elected public official, if the current or former elected public official is receiving an annuity based upon credited service in the Arkansas Public Employees' Retirement System in addition to the credited service resulting from his or her term of office as an elected public official; and

(2)(A) Refund to the current or former elected public official the accumulated contributions credited to the elected public official for his or her term of office as an elected public official less any annuity received.

(B) If a court orders that some or all of a refund of accumulated contributions under subdivision (e)(2)(A) of this section be paid as restitution in connection with the felony arising out of the official actions of the current or former elected public official, the Arkansas Public Employees' Retirement System shall:

(i) Reduce the refund of accumulated contributions by that sum; and

(ii) Direct the sum ordered by the court as restitution to the court issuing the order.

(f) This section applies to:

(1) A person elected, re-elected, or appointed as an elected public official on and after January 1, 2020; and

(2) An elected public official elected, re-elected, or appointed before January 1, 2020, if the actions constituting the felony arising out of the person's official actions while serving as an elected public official occurred after the effective date of this section.

(g) The Arkansas Public Employees' System and its employees are immune from suit for the performance of duties under this section.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that ensuring the lawful and ethical behavior of elected public officials is of utmost importance to the state; that the provisions of this act provide a powerful disincentive for unlawful conduct and relieve the state from paying certain retirement benefits to persons who abuse their office for personal gain; and this act should become effective as soon as possible to discourage and punish illegal conduct. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/M. Johnson