

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

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S3/19/19
A Bill

SENATE BILL 52

By: Senators M. Johnson, Caldwell
By: Representatives G. Hodges, Lowery

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING RETIREMENT BENEFITS; TO PROHIBIT THE COLLECTION OF RETIREMENT BENEFITS BY PUBLIC RETIREES WHO ARE CONVICTED OF A FELONY OFFENSE ARISING FROM OFFICIAL ACTIONS AS A PUBLIC EMPLOYEE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT THE COLLECTION OF RETIREMENT BENEFITS BY PERSONS CONVICTED OF A FELONY OFFENSE ARISING FROM OFFICIAL ACTIONS AS A PUBLIC EMPLOYEE; 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 except as otherwise provided:

(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) "Public employee" means an individual who is:

(A) Employed by an office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of this state; and



(B) A member of a retirement system; 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. Public employees – Ineligibility for retirement benefits upon conviction of felony arising out of official actions.

(a) As used in this section:

(1) "Felony" means a felony offense arising under a law governing:

(A) Abuse of public trust;

(B) Abuse of office; or

(C) Fraud; and

(2) "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.; and

(F) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.

(b) A current or former public employee shall forfeit his or her credited service in a retirement system and shall not receive retirement benefits from a retirement system if he or she:

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

(2) 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 a public employee.

(c)(1) Each time a person enters into employment as a public employee or consents to a promotion or change in classification during his or her employment, he or she shall be deemed to consent and agree to the forfeiture of his or her credited service in a retirement system 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 a public employee; 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 a public employee.

(2) Subdivision (c)(1) of this section applies to a public employee regardless of the date the person originally became a member of a retirement system.

(d) The clerk of the court in which the proceeding against the current or former public employee is being conducted shall send written notice by certified mail, return receipt requested, to the executive director or executive secretary of the applicable retirement system when:

(1) A current or former public employee is convicted of or pleads guilty or nolo contendere to a felony arising out of that person's

official actions while serving as a public employee;

(2) A current or former public employee 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 a public employee; 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 public employee for a felony arising out of that person's official actions while serving as a public employee.

(e) Upon the initial conviction or plea under subsection (b) of this section, the applicable retirement system shall:

(1) Have the current or former public employee's annuity stopped immediately, if the current or former public employee is receiving an annuity; and

(2)(A) Refund to the current or former public employee the accumulated contributions credited to the public employee 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 public employee, the 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) A current or former public employee who is convicted or pleads guilty or nolo contendere under subsection (b) of this section shall be restored to all rights, privileges, and benefits as a member of the applicable retirement system as if the conviction or plea had never occurred if:

(1) The current or former public employee:

(A) Has his or her conviction or plea overturned and is acquitted; or

(B) Receives a pardon; and

(2) The current or former public employee repays any accumulated contributions refunded to the member under subdivision (e)(2) of this

section.

(g)(1)(A) A prosecuting attorney shall send written notice by certified mail, return receipt requested, to the executive director or executive secretary of the applicable retirement system when a current or former public employee is charged with or indicted for a felony arising out of that person's official actions while serving as a public employee.

(B) A written notice under this section shall include any information that the applicable retirement system determines necessary for the retirement system to identify the account of the current or former public employee.

(2)(A) A retirement system shall suspend a current or former public employee from withdrawing his or her contributions from the retirement system if the retirement system receives a written notice under subdivision (g)(1) of this section.

(B) The retirement system shall not allow a current or former public employee suspended under subdivision (g)(2)(A) of this section to withdraw his or her contributions from the retirement system until:

(i) A final adjudication of the criminal proceeding;

or

(ii) The retirement system receives written confirmation from the prosecuting attorney that the charges or indictment against the current or former public employee have been:

(a) Dismissed; or

(b) Reduced so that the person is no longer charged with or indicated for a felony arising out of that person's official actions while serving as a public employee.

(3)(A) The executive director or executive secretary of the applicable retirement system or his or her designee shall notify a current or former public employee when the withdrawal of contributions is suspended under subdivision (g)(2) of this section.

(B) The notice provided under subdivision (g)(3)(A) of this section shall advise the current or former public employee of:

(i) The specific facts supporting the retirement system's suspension from the withdrawal of contributions; and

(ii) His or her right to request a waiver of the suspension from the withdrawal of contributions before the board of trustees

of the retirement system.

(C)(i) A current or former public employee may request a waiver of the suspension from the withdrawal of contributions before the board of trustees of the retirement system within thirty (30) days of receiving the notice required under this subdivision (g)(3).

(ii) A request to waive a suspension from the withdrawal of contributions shall be submitted to the board of trustees of the retirement system in a manner specified by the applicable retirement system.

(iii) Upon receiving a request to waive a suspension from the withdrawal of contributions, the board of trustees of the retirement system shall set and notify the current or former public employee of the waiver hearing date.

(iv) A retirement system may promulgate necessary rules regarding the process for considering and ruling upon a request to waive a suspension from the withdrawal of contributions under this subsection.

(h) This section applies to:

(1) A person entering into employment as a public employee on and after the effective date of this section;

(2) A public employee who entered into employment as a public employee prior to the effective date of this section if the actions constituting the felony arising out of the person's official actions while serving as a public employee occurred after the effective date of this section; and

(3) A public employee who consents to a promotion or other change in classification on and after the effective date of 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 public employees 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 retirement benefits to persons who abuse public employment 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