

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

State of Arkansas
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As Engrossed: S3/9/21 S3/23/21

A Bill

SENATE BILL 231

By: Senator M. Johnson
By: Representative Richardson

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING RETIREMENT BENEFITS; TO PROHIBIT COLLECTION OF BENEFITS BY MEMBERS AND RETIRANTS OF RETIREMENT SYSTEMS WHO ARE CONVICTED OF CERTAIN OFFENSES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING RETIREMENT BENEFITS; AND TO PROHIBIT COLLECTION OF BENEFITS BY MEMBERS AND RETIRANTS OF RETIREMENT SYSTEMS WHO ARE CONVICTED OF CERTAIN OFFENSES.

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

SECTION 1. Arkansas Code § 24-1-301, concerning the definitions used in the forfeiture of retirement benefits, is amended to add additional subdivisions to read as follows:

(3)(A) "Benefit" means a monthly payment made to a retirant or the beneficiary of a member or retirant by a retirement system in this state.

(B) "Benefit" does not include employee contributions to a retirement system in this state;

(4) "Member" means a person who is included in the membership of a retirement plan;

(5) "Public trust crime" means a crime prohibited under Arkansas Constitution, Article 5, § 9; and



(6) "Retirant" means a member who retires with a benefit payable from funds of a retirement plan.

SECTION 2. Arkansas Code § 24-1-302 is amended to read as follows:

24-1-302. Forfeiture of benefits.

(a)(1) A beneficiary forfeits his or her right to benefit payments under a retirement system if he or she:

(A) Is convicted by a court of competent jurisdiction of ~~the~~:

(i) The unlawful killing of the member or retirant;

or

(ii) Committing a public trust crime while performing his or her duties as an elected official;

(B) Pleads guilty or nolo contendere to ~~the~~:

(i) The unlawful killing of the member or retirant;

or

(ii) Committing a public trust crime while performing his or her duties as an elected official;

(C) Is found liable by a court of competent jurisdiction for the unlawful killing of the member or retirant by a preponderance of the evidence in a civil action;

(D) Is acquitted by a court of competent jurisdiction for the unlawful killing of the member or retirant by reason of insanity, mental defect or disease, or any other mental incapacity; or

(E) Is found by a court of competent jurisdiction to lack the capacity to understand or effectively assist in defending a criminal proceeding against him or her for the unlawful killing of the member or retirant.

(2) A member or retirant forfeits his or her right to benefit payments under a retirement system if he or she:

(A) Is convicted by a court of competent jurisdiction of committing a public trust crime while performing his or her duties as an elected official; or

(B) Pleads guilty or nolo contendere to committing a public trust crime while performing his or her duties as an elected official.

(3) If a retirement system finds that a member, retirant, or

beneficiary has forfeited his or her right to benefit payments from the retirement system under ~~subdivision (a)(1) of this section~~ subdivision (a)(1) or (a)(2) of this section, the retirement system shall:

~~(A) treat~~ Treat the member, retirant, or beneficiary as if he or she is deceased;

~~(B) and shall not~~ Not make benefit payments to the member, retirant, or beneficiary; and

~~(C) Refund any employee contributions, excluding interest, made by the member or retirant to the retirement system to the:~~

~~(i) Member or retirant; or~~

~~(ii) If deceased, the estate of the member or retirant if the member or retirant does not have a contingent beneficiary who may receive benefit payments under this section.~~

~~(4)(A) A retirement system may make the refund of employee contributions to a member or retirant by a:~~

~~(i) Lump-sum payment to the member or retirant; or~~

~~(ii) Series of monthly payments to the member or retirant in amounts equal to the amount the retirement system would have paid to the member or retirant had he or she not forfeited his or her benefits.~~

~~(B) A retirement system shall make the refund of employee contributions to the estate of a member or retirant by lump-sum payment to the estate of the member or retirant.~~

~~(C) Payments made under subdivision (a)(4)(A) of this section shall cease when the member or retirant is fully reimbursed for his or her employee contributions, excluding interest, to the retirement system.~~

~~(b)(1) If a member, retirant, or beneficiary appeals his or her conviction for an offense described under subdivision (a)(1) of this section~~ subdivision (a)(1) or (a)(2) of this section, benefit payments shall not be paid to the member, retirant, or beneficiary unless the appeal results in a reversal of the conviction.

~~(2)(A) If the conviction of a member, retirant, or beneficiary for an offense described under subdivision (a)(1) of this section~~ subdivision (a)(1) or (a)(2) of this section is reversed, the retirement system may make benefit payments to the member, retirant, or beneficiary.

~~(B) If the conviction of a member, retirant, or beneficiary for an offense described under subdivision (a)(1) of this section~~

subdivision (a)(1) or (a)(2) of this section is affirmed, the retirement system shall not make benefit payments to the member, retirant, or beneficiary.

~~(c) If a member or retirant does not have a contingent beneficiary who may receive benefit payments under this section, the member or retirant's contributions to the retirement system shall be refunded to the estate of the member or retirant.~~

SECTION 3. Arkansas Code §§ 24-1-303 – 24-1-305 are amended to read as follows:

24-1-303. Suspension of benefit payments.

(a) A retirement system may suspend benefit payments to a retirant or beneficiary if the retirement system:

(1) Receives the written notice required under ~~§ 24-1-304~~ § 24-1-304(a)(1) from a prosecuting attorney; or

(2) Has reasonable cause to believe that the retirant or beneficiary will be charged with ~~the unlawful killing of the member or retirant~~ any offense described under § 24-1-302.

(b) If benefit payments are suspended under this section, the suspension shall continue until:

(1) A final adjudication of the criminal or civil proceeding; or

(2)(A) The retirement system receives written confirmation from the prosecuting attorney that the retirant or beneficiary will not be charged with ~~the unlawful killing of the member or retirant~~ an offense described under § 24-1-302.

(B) The retirement system shall request written confirmation from the prosecuting attorney stating that the retirant or beneficiary will not be charged with ~~the unlawful killing of the member or retirant~~ an offense described under § 24-1-302.

24-1-304. Notice to retirement system.

(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 member, retirant, or beneficiary:

(1) Is charged with an offense described under § 24-1-302; or

(2)(A) Will not be charged with an offense described under § 24-1-302.

(B) If the prosecuting attorney receives a request under § 24-1-303 from a retirement system and a decision on whether the member, retirant, or beneficiary will be ~~or will not be~~ charged with an offense described under § 24-1-302 has not been made, the prosecuting attorney shall notify the retirement system that a decision is pending.

(b) The clerk of the court in which the proceeding against the member, retirant, or beneficiary 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 member, retirant, or beneficiary is convicted of an offense described under § 24-1-302;

(2) A member, retirant, or beneficiary appeals his or her conviction for an offense described under § 24-1-302; and

(3) The appellate court issues a final ruling upholding or reversing the conviction of the member, retirant, or beneficiary for an offense described under § 24-1-302.

(c) A written notice required under this section shall include any information that the applicable retirement system determines necessary for the retirement system to identify the account of the member or retirant and implement this subchapter.

24-1-305. Notice to member, retirant, or beneficiary.

(a)(1) The executive director or executive secretary of the applicable retirement system or his or her designee shall notify a member, retirant, or beneficiary when benefits shall not be paid as provided under § 24-1-302.

(2) The notice provided under subdivision (a)(1) of this section shall advise the member, retirant, or beneficiary of:

(A) The specific facts supporting the retirement system's nonpayment of benefits; and

(B) His or her right to request a waiver of the forfeiture before the board of trustees of the retirement system.

(b)(1) A member, retirant, or beneficiary shall request a waiver of the forfeiture by the board of trustees of the retirement system within thirty (30) days of receiving the notice required under subsection (a) of

this section.

(2) A waiver request made under subdivision (b)(1) of this section shall be submitted to the board of trustees of the retirement system in the manner specified by the applicable retirement system.

(c) Upon receiving a waiver request submitted under subdivision (b)(1) of this section, the board of trustees of the retirement system shall set and notify the member, retirant, or beneficiary of the waiver hearing date.

/s/M. Johnson