

INTERIM STUDY PROPOSAL 2019-082

State of Arkansas

As Engrossed: S3/19/19

92nd General Assembly

A Bill

Regular Session, 2019

SENATE BILL 52

By: Senators M. Johnson, Caldwell

By: Representatives G. Hodges, Lowery

Filed with: Joint Committee on Public Retirement and Social Security Programs

pursuant to A.C.A. §10-3-217.

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:

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

4 (B) A member of a retirement system; and

5 ~~(2)~~(3) "Retirement system" means:

6 (A) The Arkansas Teacher Retirement System, established by
7 the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;

8 (B) The Arkansas State Highway Employees' Retirement
9 System, established by § 24-5-103;

10 (C) The Arkansas Public Employees' Retirement System,
11 established by § 24-4-103;

12 (D) The State Police Retirement System, established by §
13 24-6-203;

14 (E) The Arkansas Judicial Retirement System, established
15 by § 24-8-201 et seq.;

16 (F) An alternate retirement plan for:

17 (i) A college, university, or the Department of
18 Higher Education provided for under § 24-7-801 et seq.; and

19 (ii) A vocational-technical school or the Department
20 of Career Education provided for under § 24-7-901 et seq.;

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

23 (H) A firemen's relief and pension fund or a policemen's
24 pension and relief fund provided for under § 24-11-101 et seq.

25
26 SECTION 2. Arkansas Code Title 24, Chapter 1, Subchapter 3, is amended
27 to add an additional section to read as follows:

28 24-1-306. Public employees – Ineligibility for retirement benefits
29 upon conviction of felony arising out of official actions.

30 (a) As used in this section:

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

33 (A) Abuse of public trust;

34 (B) Abuse of office; or

35 (C) Fraud; and

36 (2) "Retirement system" means:

1 (A) The Arkansas Teacher Retirement System, established by
2 the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;

3 (B) The Arkansas State Highway Employees' Retirement
4 System, established by § 24-5-103;

5 (C) The Arkansas Public Employees' Retirement System,
6 established by § 24-4-103;

7 (D) The State Police Retirement System, established by §
8 24-6-203;

9 (E) The Arkansas Judicial Retirement System, established
10 by § 24-8-201 et seq.; and

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

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

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

18 (2) Pleads guilty or nolo contendere in a state or federal court
19 to a felony arising out of that person's official actions while serving as a
20 public employee.

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

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

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

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

34 (d) The clerk of the court in which the proceeding against the current
35 or former public employee is being conducted shall send written notice by

1 certified mail, return receipt requested, to the executive director or
2 executive secretary of the applicable retirement system when:

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

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

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

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

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

18 (2)(A) Refund to the current or former public employee the
19 accumulated contributions credited to the public employee less any annuity
20 received.

21 (B) If a court orders that some or all of a refund of
22 accumulated contributions under subdivision (e)(2)(A) of this section be paid
23 as restitution in connection with the felony arising out of the official
24 actions of the current or former public employee, the retirement system
25 shall:

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

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

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

35 (1) The current or former public employee:

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

3 (B) Receives a pardon; and

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

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

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

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

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

23 (i) A final adjudication of the criminal proceeding;
24 or

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

28 (a) Dismissed; or

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

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

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

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

5 (ii) His or her right to request a waiver of the
6 suspension from the withdrawal of contributions before the board of trustees
7 of the retirement system.

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

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

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

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

24 (h) This section applies to:

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

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

32 (3) A public employee who consents to a promotion or other
33 change in classification on and after the effective date of this section.

34
35 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that ensuring the lawful and

