

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011

# A Bill

HOUSE BILL 1119

4  
5 By: Representatives Pennartz, Summers, Sanders

## For An Act To Be Entitled

8 AN ACT TO PREVENT STATE EMPLOYEES CONVICTED OF THEFT  
9 OF PROPERTY AGAINST THE EMPLOYER FROM DRAWING STATE  
10 RETIREMENT BENEFITS BASED ON THE MONTHS IN WHICH THE  
11 THEFT OCCURRED; TO DECLARE AN EMERGENCY; AND FOR  
12 OTHER PURPOSES.

## Subtitle

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15 TO PREVENT STATE EMPLOYEES CONVICTED OF  
16 THEFT OF PROPERTY AGAINST THE EMPLOYER  
17 FROM DRAWING STATE RETIREMENT BENEFITS  
18 BASED ON THE MONTHS IN WHICH THE THEFT  
19 OCCURRED AND TO DECLARE AN EMERGENCY.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24  
25 SECTION 1. Arkansas Code § 24-4-1002 is amended to read as follows:

26 24-4-1002. Benefit provisions – Subjection of annuity rights to  
27 process of law -- Loss of right to benefits.

28 (a) ~~The~~ Except as provided in this chapter, the right of a person to  
29 an annuity, ~~to~~ the return of accumulated contributions, the annuity itself,  
30 ~~any~~ an annuity option, any other right accrued or accruing under ~~the~~  
31 ~~provisions of~~ § 24-4-101 et seq., and all moneys belonging to a plan ~~shall~~  
32 ~~not be:~~

33 (1) Are not subject to execution, garnishment, attachment, the  
34 operation of bankruptcy or insolvency laws, or any other process of law  
35 ~~whatsoever and shall be unassignable, except as is specifically provided in~~  
36 ~~this chapter; and~~



1           (2) Are not assignable.

2           (b) An employer ~~shall have~~ has the right of setoff for any claim  
3 arising from embezzlement by or fraud of a member, retirant, or beneficiary.

4           (c) If a member, retirant, or beneficiary has pleaded guilty or nolo  
5 contendere to or been found guilty of theft of property against the employer  
6 under § 5-36-103, then the portion of the annuity based on employer  
7 contributions shall be recalculated to exclude the months in which the theft  
8 of property against the employer occurred beginning with thefts occurring on  
9 or after July 1, 2011.

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11           SECTION 2. Arkansas Code Title 24, Chapter 5, is amended to add an  
12 additional section to read as follows:

13           24-5-205. Loss of right to benefits.

14           If a member, retirant, or beneficiary has pleaded guilty or nolo  
15 contendere to or been found guilty of theft of property against the employer  
16 under § 5-36-103, then the portion of the annuity based on employer  
17 contributions shall be recalculated to exclude the months in which the theft  
18 of property against the employer occurred beginning with thefts occurring on  
19 or after July 1, 2011.

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21           SECTION 3. Arkansas Code § 24-6-223 is amended to read as follows:

22           24-6-223. Interest in fund not transferable or subject to legal  
23 process -- Loss of right to benefits.

24           (a) No person entitled to any interest or share in any pension, any  
25 return of contributions or accumulated contributions, or any other benefit  
26 payable or to be made payable from funds of the system shall have the right  
27 to anticipate such entitlement or to sell, assign, pledge, mortgage, or  
28 otherwise dispose of or encumber such entitlement, nor shall any interest or  
29 share in any pension, any return of contributions or accumulated  
30 contributions, or any other benefit payable or to be made payable from funds  
31 of the system be liable for the debts or liabilities of the person or persons  
32 entitled thereto, or be subject to attachment, garnishment, execution, levy,  
33 sale, or judicial proceedings, or be transferable by any means, voluntarily  
34 or involuntarily, except as expressly provided for in this subchapter.

35           (b) ~~Should a member be~~ If a member is covered by a group insurance or  
36 prepayment plan participated in by the Department of Arkansas State Police

1 and ~~should he be~~ if he or she is permitted to, ~~and elect to~~ and elects to,  
2 continue the coverage as a retirant, ~~nothing contained in this section shall~~  
3 does not prevent the board, upon the member's written request, from deducting  
4 from his or her pension the payments required of him or her to continue  
5 coverage under the group insurance or prepayment plan.

6 (c) The State of Arkansas ~~shall have~~ has the right of setoff for any  
7 claim arising from embezzlement by, or fraud of, a member, retirant, or  
8 beneficiary.

9 (d) If a member, retirant, or beneficiary has pleaded guilty or nolo  
10 contendere to or been found guilty of theft of property against the employer  
11 under § 5-36-103, then the portion of the annuity based on employer  
12 contributions shall be recalculated to exclude the months in which the theft  
13 of property against the employer occurred beginning with thefts occurring on  
14 or after July 1, 2011.

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16 SECTION 4. Arkansas Code § 24-6-413 is amended to read as follows:

17 24-6-413. Benefit provisions – Subjection of annuity rights to process  
18 of law -- Loss of right to benefits.

19 (a) The right of a person to an annuity, to the return of accumulated  
20 contributions, the annuity itself, any annuity option, any other right  
21 accrued or accruing under the provisions of the subchapter, and all moneys  
22 belonging to a plan shall not be subject to execution, garnishment,  
23 attachment, the operation of bankruptcy or insolvency laws, or any other  
24 process of law whatsoever and shall be unassignable, except as is  
25 specifically provided in this chapter.

26 (b) An employer ~~shall have~~ has the right of setoff for any claim  
27 arising from embezzlement by or fraud of a member, retirant, or beneficiary.

28 (c) If a member, retirant, or beneficiary has pleaded guilty or nolo  
29 contendere to or been found guilty of theft of property against the employer  
30 under § 5-36-103, then the portion of the annuity based on employer  
31 contributions shall be recalculated to exclude the months in which the theft  
32 of property against the employer occurred beginning with thefts occurring on  
33 or after July 1, 2011.

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35 SECTION 5. Arkansas Code § 24-7-715 is amended to read as follows:

36 24-7-715. Benefit rights not subject to legal process -- Loss of right

1 to benefits.

2 (a)(1) The right of a person to an annuity, to the return of  
3 accumulated contributions, to the annuity itself, to any annuity option, and  
4 to any other right accrued or accruing under the provisions of the this act,  
5 and all moneys belonging to the Arkansas Teacher Retirement System, shall not  
6 be subject to execution, garnishment, attachment, the operation of bankruptcy  
7 or insolvency laws, or any other process of law whatsoever and shall be  
8 unassignable, except as is specifically provided in this act.

9 (2) However, the employer ~~shall have~~ has the right of setoff for  
10 any claim arising from embezzlement by, or fraud of, a member, retirant, or  
11 beneficiary.

12 (b) ~~In the event~~ If an individual is no longer an active teacher or  
13 employee of any public school district in this state, ~~nor or~~ or on leave of  
14 absence, and is found by any court of competent jurisdiction of this state to  
15 be willfully refusing or failing to support minor dependent children of the  
16 individual in violation of a court order providing for such support, although  
17 the individual is financially able to do so, then the court may, ~~in its~~  
18 ~~discretion,~~ order the accumulated contributions, annuity or annuity options,  
19 or any other funds accruing under ~~the provisions of~~ this act to be paid into  
20 the registry of the court for such further disposition as the court ~~shall~~  
21 ~~deem~~ deems just and proper.

22 (c)(1) If, under the provisions of subsection (b) of this section,  
23 there is created a court order ~~which~~ that directs payment of all, or a  
24 portion of, a person's accumulated contributions, the payment shall be made  
25 by the system to the court.

26 (2) The person shall be notified by the system of the payment  
27 and shall be given an opportunity to redeposit with the system the amount of  
28 the payment.

29 (3) If the payment is not redeposited, then any system annuity  
30 otherwise payable to, or on behalf of, the person shall be reduced in the  
31 proportion that the payment bears to the person's accumulated contributions  
32 before the payment.

33 (d) If a member, retirant, or beneficiary has pleaded guilty or nolo  
34 contendere to or been found guilty of theft of property against the employer  
35 under § 5-36-103, then the portion of the annuity based on employer  
36 contributions shall be recalculated to exclude the months in which the theft

1 of property against the employer occurred beginning with thefts occurring on  
2 or after July 1, 2011.

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4 SECTION 6. Arkansas Code § 24-10-616 is amended to read as follows:

5 24-10-616. Subjection of benefit rights to legal process -- Loss of  
6 right to benefit.

7 (a) The right of a person to an annuity, the return of accumulated  
8 contributions, the annuity itself, any annuity option, any other right  
9 accrued or accruing under the provisions of this chapter, and all moneys  
10 belonging to a plan shall not be subject to execution, garnishment,  
11 attachment, the operation of bankruptcy or insolvency laws, or any other  
12 process of law whatsoever and shall be unassignable, except as is  
13 specifically provided in this chapter.

14 (b) However, an employer ~~shall have~~ has the right of setoff for any  
15 claim arising from embezzlement by, or fraud of, a member, retirant, or  
16 beneficiary.

17 (c) If a member, retirant, or beneficiary has pleaded guilty or nolo  
18 contendere to or been found guilty of theft of property against the employer  
19 under § 5-36-103, then the portion of the annuity based on employer  
20 contributions shall be recalculated to exclude the months in which the theft  
21 of property against the employer occurred beginning with thefts occurring on  
22 or after July 1, 2011.

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24 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the  
25 General Assembly of the State of Arkansas that employees convicted of theft  
26 of property against the employer are currently eligible to draw retirement  
27 benefits from the employer; that these members should not be allowed to  
28 profit from their crimes; and that for the months in which the thefts  
29 occurred, the portion of those benefits that are from employer contributions  
30 should not be paid to the members. Therefore, an emergency is declared to  
31 exist and this act being necessary for the preservation of the public peace,  
32 health, and safety shall become effective on July 1, 2011.