

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1336

5 By: Representative Tosh  
6

## For An Act To Be Entitled

8 AN ACT TO PROVIDE FOR THE FORFEITURE OF BENEFITS  
9 UNDER A PUBLIC RETIREMENT SYSTEM BY CERTAIN PERSONS;  
10 AND FOR OTHER PURPOSES.  
11

## Subtitle

12 TO PROVIDE FOR THE FORFEITURE OF BENEFITS  
13 UNDER A PUBLIC RETIREMENT SYSTEM BY  
14 CERTAIN PERSONS.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code Title 24, Chapter 2, is amended to add an  
22 additional subchapter to read as follows:

23 Subchapter 8 - Forfeiture of Public Retirement System Benefits  
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25 24-2-801. Definitions.

26 (a) As used in this subchapter:

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

30 (2) "Benefit" means an annuity, a retirement allowance, a  
31 pension, an optional benefit a postretirement benefit, and any other right  
32 accrued or accruing to a member or retirant under a retirement system;

33 (3) "Conviction" and "convicted" means:

34 (A) An adjudication of guilt by a court of competent  
35 jurisdiction;

36 (B) A plea of guilty or nolo contendere;



1 (C) A jury verdict of guilty; or

2 (D) A deferred adjudication of guilt by a court of  
 3 competent jurisdiction when the accused is placed on probation;

4 (4) "Governmental body" means an office, department, commission,  
 5 council, board, committee, legislative body, agency, or other establishment  
 6 of the executive, judicial, or legislative branch of the state, municipality,  
 7 county, school district, improvement district, or any political district or  
 8 subdivision thereof;

9 (5) "Member" means an individual who is included in the  
 10 membership of a retirement system;

11 (6) "Public employee" means an individual who is an elected  
 12 official, a constitutional officer, an appointee, or an employee of a  
 13 governmental body;

14 (7) "Retirant" means a member receiving a plan annuity from a  
 15 retirement system; and

16 (8) "Retirement system" means a state-supported retirement  
 17 system administered by an agency of the State of Arkansas.

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19 24-2-802. Forfeiture of benefits.

20 (a) A member or retirant who is convicted of a federal or state felony  
 21 offense that relates to or arises out of the member's service as an elected  
 22 official, constitutional officer, appointee, or employee of a governmental  
 23 body forfeits his or her accrued or accruing benefits under a retirement  
 24 system.

25 (b) If a member or retirant forfeits his or her benefits under this  
 26 section, then the:

27 (1) Member or retirant shall pay the retirement system the  
 28 amount of benefit payments that he or she received in excess of his or her  
 29 accumulated contributions to the retirement system; and

30 (2) Board of trustees of the applicable retirement system shall  
 31 direct the retirement system to either:

32 (A) Refund to the member or retirant, without interest,  
 33 the contributions paid into the retirement system by the member or retirant;  
 34 or

35 (B) Upon the death of the member or retirant, make benefit  
 36 payments to a beneficiary of the member or retirant.

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

3                   (A) Is convicted by a court of competent jurisdiction of  
4 committing or attempting to commit an offense described under subsection (a)  
5 of this section with the member or retirant;

6                   (B) Is convicted by a court of competent jurisdiction of  
7 acting as an accomplice to the member or retirant who committed an offense  
8 described under subsection (a) of this section;

9                   (C) Is convicted by a court of competent jurisdiction of  
10 the unlawful killing of the member or retirant;

11                   (D) Pleads guilty or nolo contendere to the unlawful  
12 killing of the member or retirant;

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

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

19                   (G) Is found by a court of competent jurisdiction to lack  
20 the capacity to understand or effectively assist in defending a criminal  
21 proceeding against himself or herself for the unlawful killing of the member  
22 or retirant.

23           (2) If a retirement system finds that the beneficiary of a  
24 member or retirant has forfeited his or her right to benefit payments from  
25 the retirement system under subdivision (c)(1) of this section, the  
26 retirement system shall treat the beneficiary as if he or she is deceased and  
27 shall not make benefit payments to the beneficiary.

28           (d) If the member or retirant does not have a beneficiary who may  
29 receive benefit payments under this section, the member or retirant's  
30 contributions shall be refunded to the estate of the member or retirant.

31           (e)(1)(A) If a member, retirant, or beneficiary appeals his or her  
32 conviction for an offense described under subsection (a) and subdivision  
33 (c)(1) of this section, benefit payments shall not be paid to the member,  
34 retirant, or beneficiary unless the appeal results in a reversal of the  
35 conviction.

36                   (B) If a member, retirant, or beneficiary appeals his or

1 her conviction for an offense described under subsection (a) and subdivision  
2 (c)(1) of this section, benefit payments drawn from nonemployer contributions  
3 to the member or retirant's account may be paid to the member, retirant, or  
4 beneficiary, whichever is applicable.

5 (2)(A) If the conviction of a member, retirant, or beneficiary  
6 for an offense described under subsection (a) and subdivision (c)(1) of this  
7 section is reversed, the retirement system may make benefit payments to the  
8 member, retirant, or beneficiary, whichever is applicable.

9 (B) If the conviction of a member, retirant, or  
10 beneficiary for an offense described under subsection (a) and subdivision  
11 (c)(1) of this section is affirmed, the retirement system shall not make  
12 benefit payments to the member, retirant, or beneficiary.

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14 24-2-803. Notice to the retirement system.

15 (a) The clerk of the court in which the proceeding against the member,  
16 retirant, or beneficiary is being conducted shall send written notice by  
17 certified mail, return receipt requested, to the executive director or  
18 executive secretary of the applicable retirement system when a:

19 (1) Member, retirant, or beneficiary is convicted of an offense  
20 described under § 24-1-302;

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

23 (3) When the appellate court issues a final ruling upholding or  
24 reversing the conviction of the member, retirant, or beneficiary.

25 (b) The written notice required under this section shall include any  
26 information that the applicable retirement system determines necessary for  
27 the retirement system to identify the account of the member or retirant and  
28 implement this subchapter.

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30 24-2-804. Notice to the member, retirant, or beneficiary.

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

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

36 (A) The specific facts supporting the retirement system's

1 nonpayment of benefits; and

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

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

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

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

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