

1 State of Arkansas *As Engrossed: S2/20/19*  
2 92nd General Assembly **A Bill**

3 Regular Session, 2019

SENATE BILL 238

4

5 By: Senators M. Johnson, G. Stubblefield, Caldwell, B. Ballinger, Bledsoe, E. Cheatham, B. Davis, L.

6 Eads, J. English, Flippo, T. Garner, K. Hammer, Hester, G. Leding, D. Wallace, *J. Hendren, Bond, Irvin*

7 By: Representatives G. Hodges, Sullivan, Lowery, Beck, Bentley, Boyd, A. Davis, L. Fite, Lundstrum,

8 McCollum, Richmond, Womack, *J. Mayberry, Blake, Burch, Cavanaugh, V. Flowers, D. Whitaker*

9

10 **For An Act To Be Entitled**

11 AN ACT TO PROVIDE FOR INELIGIBILITY FOR RETIREMENT  
12 BENEFITS UPON CONVICTION OF A FELONY ARISING OUT OF  
13 AN ELECTED PUBLIC OFFICIAL'S OFFICIAL ACTIONS; TO  
14 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

15

16

17 **Subtitle**

18 TO PROVIDE FOR INELIGIBILITY FOR  
19 RETIREMENT BENEFITS UPON CONVICTION OF A  
20 FELONY ARISING OUT OF AN ELECTED PUBLIC  
21 OFFICIAL'S OFFICIAL ACTIONS; AND TO  
22 DECLARE AN EMERGENCY.

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

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27 SECTION 1. Arkansas Code § 24-1-301 is amended to read as follows:

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24-1-301. Definitions.

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As used in this subchapter except as otherwise provided:

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(1) "Beneficiary" means an individual who receives or is  
31 designated by a member or retirant to receive a plan benefit under a  
32 retirement system; ~~and~~

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(2) "Elected public official" means a person elected to one (1)  
34 or more of the following offices:

35

(A) Governor;

36

(B) Lieutenant Governor;



- 1                    (C) Attorney General;  
 2                    (D) Secretary of State;  
 3                    (E) Treasurer of State;  
 4                    (F) Auditor of State;  
 5                    (G) Commissioner of State Lands;  
 6                    (H) A member of the Senate;  
 7                    (I) A member of the House of Representatives;  
 8                    (J) Justice of the Supreme Court;  
 9                    (K) Judge of the Court of Appeals;  
 10                   (L) Circuit judge; or  
 11                   (M) District judge; and

12                   ~~(2)~~(3) “Retirement system” means:

- 13                   (A) The Arkansas Teacher Retirement System, established by  
 14 the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;
- 15                   (B) The Arkansas State Highway Employees’ Retirement  
 16 System, established by § 24-5-103;
- 17                   (C) The Arkansas Public Employees’ Retirement System,  
 18 established by § 24-4-103;
- 19                   (D) The State Police Retirement System, established by §  
 20 24-6-203;
- 21                   (E) The Arkansas Judicial Retirement System, established  
 22 by § 24-8-201 et seq.;
- 23                   (F) An alternate retirement plan for:
- 24                   (i) A college, university, or the Department of  
 25 Higher Education provided for under § 24-7-801 et seq.; and
- 26                   (ii) A vocational-technical school or the Department  
 27 of Career Education provided for under § 24-7-901 et seq.;
- 28                   (G) The Arkansas Local Police and Fire Retirement System  
 29 provided for under § 24-10-101 et seq.; and
- 30                   (H) A firemen’s relief and pension fund or a policemen’s  
 31 pension and relief fund provided for under § 24-11-101 et seq.

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

35                   24-1-306. Elected public officials – Ineligibility for retirement  
 36 benefits upon conviction of felony arising out of official actions.

1 (a) As used in this section, "retirement system" means:

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

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

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

8 (4) The State Police Retirement System, established by § 24-6-  
9 203;

10 (5) The Arkansas Judicial Retirement System, established by §  
11 24-8-201 et seq.; and

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

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

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

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

23 (c)(1) Each time a person is elected or re-elected as an elected  
24 public official, as a condition of his or her election, he or she shall be  
25 deemed to consent and agree to the forfeiture of his or her credited service  
26 in a retirement system if the person:

27 (A) Is convicted in a state or federal court of a felony  
28 arising out of that person's official actions while serving as an elected  
29 public official; or

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

33 (2) Subdivision (c)(1) of this section applies to an elected  
34 public official regardless of the date the person originally became a member  
35 of a retirement system.

36 (d) The clerk of the court in which the proceeding against the current

1 or former elected public official is being conducted shall send written  
2 notice by certified mail, return receipt requested, to the executive director  
3 or executive secretary of the applicable retirement system when:

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

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

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

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

17 (1) Have the current or former elected public official's annuity  
18 stopped immediately, if the current or former elected public official is  
19 receiving an annuity; and

20 (2)(A) Refund to the current or former elected public official  
21 the accumulated contributions credited to the elected public official less  
22 any annuity received.

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

28 (i) Reduce the refund of accumulated contributions  
29 by that sum; and

30 (ii) Direct the sum ordered by the court as  
31 restitution to the court issuing the order.

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

1           (1) The current or former elected public official:

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

4                   (B) Receives a pardon; and

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

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

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

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

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

26                           (i) A final adjudication of the criminal proceeding;  
27 or

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

31                                   (a) Dismissed; or

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

35           (3)(A) The executive director or executive secretary of the  
36 applicable retirement system or his or her designee shall notify a current or

1 former elected public official when the withdrawal of contributions is  
2 suspended under subdivision (g)(2) of this section.

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

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

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

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

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

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

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

26 (h) This section applies to

27 (1) A person elected or re-elected as an elected public official  
28 on and after January 1, 2020; and

29 (2) An elected public official elected or re-elected prior to  
30 January 1, 2020 if the actions constituting the felony arising out of the  
31 person's official actions while serving as an elected public official  
32 occurred after the effective date of this section.

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34 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
35 General Assembly of the State of Arkansas that ensuring the lawful and  
36 ethical behavior of elected public officials is of utmost importance to the

1 state; that the provisions of this act provide a powerful disincentive for  
2 unlawful conduct and relieve the state from paying retirement benefits to  
3 persons who abuse their office for personal gain; and this act should become  
4 effective as soon as possible to discourage and punish illegal conduct.

5 Therefore, an emergency is declared to exist, and this act being immediately  
6 necessary for the preservation of the public peace, health, and safety shall  
7 become effective on:

8 (1) The date of its approval by the Governor;

9 (2) If the bill is neither approved nor vetoed by the Governor,  
10 the expiration of the period of time during which the Governor may veto the  
11 bill; or

12 (3) If the bill is vetoed by the Governor and the veto is  
13 overridden, the date the last house overrides the veto.

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16 */s/M. Johnson*  
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