

1 State of Arkansas As Engrossed: S2/20/19 S3/13/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 238

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5 By: Senators M. Johnson, G. Stubblefield, Caldwell, B. Ballinger, Bledsoe, E. Cheatham, B. Davis, L.
6 Eads, J. English, Flipppo, T. Garner, K. Hammer, Hester, G. Leding, D. Wallace, *J. Hendren, Bond, Irvin,*
7 *K. Ingram*

8 By: Representatives G. Hodges, Sullivan, Lowery, Beck, Bentley, Boyd, A. Davis, L. Fite, Lundstrum,
9 McCollum, Richmond, Womack, *J. Mayberry, Blake, Burch, Cavanaugh, V. Flowers, D. Whitaker*

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For An Act To Be Entitled

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

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Subtitle

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

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

27

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

29 24-1-301. Definitions.

30 As used in this subchapter except as otherwise provided:

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

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

36 (A) Governor;



- 1 (B) Lieutenant Governor;
 2 (C) Attorney General;
 3 (D) Secretary of State;
 4 (E) Treasurer of State;
 5 (F) Auditor of State;
 6 (G) Commissioner of State Lands;
 7 (H) A member of the Senate; or
 8 (I) A member of the House of Representatives; and

9 ~~(2)~~(3) “Retirement system” means:

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

29
 30 SECTION 2. Arkansas Code Title 24, Chapter 1, Subchapter 3, is amended
 31 to add an additional section to read as follows:

32 24-1-306. Elected public officials – Ineligibility for retirement
 33 benefits upon conviction of felony arising out of official actions.

34 (a) As used in this section:

35 (1) "Felony" means a felony offense arising under a law
 36 governing:

1 (A) Abuse of public trust;

2 (B) Abuse of office; or

3 (C) Fraud; and

4 (2) "Retirement system" means:

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

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

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

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

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

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

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

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

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

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

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

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

36 (2) Subdivision (c)(1) of this section applies to an elected

1 public official regardless of the date the person originally became a member
2 of a retirement system.

3 (d) The clerk of the court in which the proceeding against the current
4 or former elected public official is being conducted shall send written
5 notice by certified mail, return receipt requested, to the executive director
6 or executive secretary of the applicable retirement system when:

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

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

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

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

20 (1) Have the current or former elected public official's annuity
21 stopped immediately, if the current or former elected public official is
22 receiving an annuity; and

23 (2)(A) Refund to the current or former elected public official
24 the accumulated contributions credited to the elected public official less
25 any annuity received.

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

31 (i) Reduce the refund of accumulated contributions
32 by that sum; and

33 (ii) Direct the sum ordered by the court as
34 restitution to the court issuing the order.

35 (f) A current or former elected public official who is convicted or
36 pleads guilty or nolo contendere under subsection (b) of this section shall

1 be restored to all rights, privileges, and benefits as a member of the
2 applicable retirement system as if the conviction or plea had never occurred
3 if:

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

5 (A) Has his or her conviction or plea overturned and is
6 acquitted; or

7 (B) Receives a pardon; and

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

11 (g) This section applies to

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

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

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19 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
20 General Assembly of the State of Arkansas that ensuring the lawful and
21 ethical behavior of elected public officials is of utmost importance to the
22 state; that the provisions of this act provide a powerful disincentive for
23 unlawful conduct and relieve the state from paying retirement benefits to
24 persons who abuse their office for personal gain; and this act should become
25 effective as soon as possible to discourage and punish illegal conduct.
26 Therefore, an emergency is declared to exist, and this act being immediately
27 necessary for the preservation of the public peace, health, and safety shall
28 become effective on:

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

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

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

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/s/M. Johnson

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