

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

As Engrossed: S3/19/19

A Bill

SENATE BILL 52

5 By: Senators M. Johnson, Caldwell
6 By: Representatives G. Hodges, Lowery
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING RETIREMENT
10 BENEFITS; TO PROHIBIT THE COLLECTION OF RETIREMENT
11 BENEFITS BY PUBLIC RETIREES WHO ARE CONVICTED OF A
12 FELONY OFFENSE ARISING FROM OFFICIAL ACTIONS AS A
13 PUBLIC EMPLOYEE; TO DECLARE AN EMERGENCY; AND FOR
14 OTHER PURPOSES.

Subtitle

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18 TO PROHIBIT THE COLLECTION OF RETIREMENT
19 BENEFITS BY PERSONS CONVICTED OF A FELONY
20 OFFENSE ARISING FROM OFFICIAL ACTIONS AS
21 A PUBLIC EMPLOYEE; AND TO DECLARE AN
22 EMERGENCY.
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24

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

26
27 SECTION 1. Arkansas Code § 24-1-301 is amended to read as follows:
28 24-1-301. Definitions.

29 As used in this subchapter except as otherwise provided:

30 (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~~

33 (2) "Public employee" means an individual who is:

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



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

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

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

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

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

9 (D) The State Police Retirement System, established by §
10 24-6-203;

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

13 (F) An alternate retirement plan for:

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

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

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

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

22

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

25 24-1-306. Public employees – Ineligibility for retirement benefits
26 upon conviction of felony arising out of official actions.

27 (a) As used in this section:

28 (1) "Felony" means a felony offense arising under a law
29 governing:

30 (A) Abuse of public trust;

31 (B) Abuse of office; or

32 (C) Fraud; and

33 (2) "Retirement system" means:

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

36 (B) The Arkansas State Highway Employees' Retirement

1 System, established by § 24-5-103;

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

4 (D) The State Police Retirement System, established by §
5 24-6-203;

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

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

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

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

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

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

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

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

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

31 (d) The clerk of the court in which the proceeding against the current
32 or former public employee is being conducted shall send written notice by
33 certified mail, return receipt requested, to the executive director or
34 executive secretary of the applicable retirement system when:

35 (1) A current or former public employee is convicted of or
36 pleads guilty or nolo contendere to a felony arising out of that person's

1 official actions while serving as a public employee;

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

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

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

11 (1) Have the current or former public employee's annuity stopped
12 immediately, if the current or former public employee is receiving an
13 annuity; and

14 (2)(A) Refund to the current or former public employee the
15 accumulated contributions credited to the public employee less any annuity
16 received.

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

22 (i) Reduce the refund of accumulated contributions
23 by that sum; and

24 (ii) Direct the sum ordered by the court as
25 restitution to the court issuing the order.

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

31 (1) The current or former public employee:

32 (A) Has his or her conviction or plea overturned and is
33 acquitted; or

34 (B) Receives a pardon; and

35 (2) The current or former public employee repays any accumulated
36 contributions refunded to the member under subdivision (e)(2) of this

1 section.

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

7 (B) A written notice under this section shall include any
8 information that the applicable retirement system determines necessary for
9 the retirement system to identify the account of the current or former public
10 employee.

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

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

18 (i) A final adjudication of the criminal proceeding;
19 or

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

23 (a) Dismissed; or

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

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

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

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

35 (ii) His or her right to request a waiver of the
36 suspension from the withdrawal of contributions before the board of trustees

1 of the retirement system.

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

6 (ii) A request to waive a suspension from the
7 withdrawal of contributions shall be submitted to the board of trustees of
8 the retirement system in a manner specified by the applicable retirement
9 system.

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

14 (iv) A retirement system may promulgate necessary
15 rules regarding the process for considering and ruling upon a request to
16 waive a suspension from the withdrawal of contributions under this
17 subsection.

18 (h) This section applies to:

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

21 (2) A public employee who entered into employment as a public
22 employee prior to the effective date of this section if the actions
23 constituting the felony arising out of the person's official actions while
24 serving as a public employee occurred after the effective date of this
25 section; and

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

28
29 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that ensuring the lawful and
31 ethical behavior of public employees is of utmost importance to the state;
32 that the provisions of this act provide a powerful disincentive for unlawful
33 conduct and relieve the state from paying retirement benefits to persons who
34 abuse public employment for personal gain; and this act should become
35 effective as soon as possible to discourage and punish illegal conduct.
36 Therefore, an emergency is declared to exist, and this act being immediately

1 necessary for the preservation of the public peace, health, and safety shall
2 become effective on:

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

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

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

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/s/M. Johnson