

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

1 State of Arkansas As Engrossed: S2/20/19 S3/13/19 S4/2/19

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 *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*

10

11

## For An Act To Be Entitled

12

AN ACT TO PROVIDE FOR INELIGIBILITY FOR *CERTAIN*

13

*RETIREMENT* BENEFITS UPON CONVICTION OF A FELONY

14

ARISING OUT OF AN ELECTED PUBLIC OFFICIAL'S OFFICIAL

15

ACTIONS; TO DECLARE AN EMERGENCY; AND FOR OTHER

16

PURPOSES.

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18

19

## Subtitle

20

*TO PROVIDE FOR INELIGIBILITY FOR CERTAIN*

21

*RETIREMENT BENEFITS UPON CONVICTION OF A*

22

*FELONY ARISING OUT OF AN ELECTED PUBLIC*

23

*OFFICIAL'S OFFICIAL ACTIONS; AND TO*

24

*DECLARE AN EMERGENCY.*

25

26

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

28

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

30 *24-1-301. Definitions.*

31 *As used in this subchapter:*

32 *(1) "Beneficiary" means an individual who receives or is*

33 *designated by a member or retirant to receive a plan benefit under a*

34 *retirement system; ~~and~~*

35 *(2) "Elected public official" means a person elected or*

36 *appointed to one (1) or more of the following offices:*



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

10                    ~~(2)~~(3) "Retirement system" means:

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

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

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

36                    (a) As used in this section, "felony" means a felony offense arising

1 under a law governing:

2 (1) Abuse of public trust;

3 (2) Abuse of office; or

4 (3) Fraud.

5 (b)(1) A current or former elected public official shall forfeit his  
6 or her credited service in the Arkansas Public Employees' Retirement System  
7 for his or her term of office as an elected public official if he or she:

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

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

14 (2) The credited service forfeited under subdivision (b)(1) of  
15 this section includes all credited service in the Arkansas Public Employees'  
16 Retirement System earned as an elected public official, irrespective of the  
17 elected public office held when performing the official actions from which  
18 the felony arose.

19 (c)(1) Each time a person is elected, re-elected, or appointed as an  
20 elected public official, as a condition of his or her election or  
21 appointment, he or she shall be deemed to consent and agree to the forfeiture  
22 of his or her credited service in the Arkansas Public Employees' Retirement  
23 System for his or her term of office as an elected public official if the  
24 person:

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

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

31 (2) Subdivision (c)(1) of this section applies to an elected  
32 public official regardless of the date the person originally became a member  
33 of the Arkansas Public Employees' Retirement System.

34 (d) The clerk of the court in which a proceeding against the current  
35 or former elected public official is being conducted shall send written  
36 notice by certified mail, return receipt requested, to the Executive Director

1 of the Arkansas Public Employees' Retirement System when:

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

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

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

13 (e) Upon the final determination of a conviction or plea under  
14 subsection (b) of this section, including without limitation the final  
15 resolution of an appeal that upholds the conviction or plea, the Arkansas  
16 Public Employees' Retirement System shall:

17 (1) Have the current or former elected public official's  
18 annuity:

19 (A) Stopped immediately, if the current or former elected  
20 public official is receiving an annuity that is based solely upon his or her  
21 term of office as an elected public official; or

22 (B) Reduced by the amount of the annuity attributable to  
23 his or her term of office as an elected public official, if the current or  
24 former elected public official is receiving an annuity based upon credited  
25 service in the Arkansas Public Employees' Retirement System in addition to  
26 the credited service resulting from his or her term of office as an elected  
27 public official; and

28 (2)(A) Refund to the current or former elected public official  
29 the accumulated contributions credited to the elected public official for his  
30 or her term of office as an elected public official less any annuity  
31 received.

32 (B) If a court orders that some or all of a refund of  
33 accumulated contributions under subdivision (e)(2)(A) of this section be paid  
34 as restitution in connection with the felony arising out of the official  
35 actions of the current or former elected public official, the Arkansas Public  
36 Employees' Retirement System shall:

1 (i) Reduce the refund of accumulated contributions  
2 by that sum; and

3 (ii) Direct the sum ordered by the court as  
4 restitution to the court issuing the order.

5 (f) This section applies to:

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

8 (2) An elected public official elected, re-elected, or appointed  
9 before January 1, 2020, if the actions constituting the felony arising out of  
10 the person's official actions while serving as an elected public official  
11 occurred after the effective date of this section.

12 (g) The Arkansas Public Employees' System and its employees are immune  
13 from suit for the performance of duties under this section.

14  
15 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
16 General Assembly of the State of Arkansas that ensuring the lawful and  
17 ethical behavior of elected public officials is of utmost importance to the  
18 state; that the provisions of this act provide a powerful disincentive for  
19 unlawful conduct and relieve the state from paying certain retirement  
20 benefits to persons who abuse their office for personal gain; and this act  
21 should become effective as soon as possible to discourage and punish illegal  
22 conduct. Therefore, an emergency is declared to exist, and this act being  
23 immediately necessary for the preservation of the public peace, health, and  
24 safety shall become effective on:

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

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

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

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33 /s/M. Johnson  
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