

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4131

A bill to amend 1994 PA 350, entitled
"Public employee retirement benefits forfeiture act,"
by amending sections 2, 3, 4, and 5 (MCL 38.2702, 38.2703, 38.2704,
and 38.2705), sections 2, 4, and 5 as amended by 1996 PA 467, and
by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Felony arising out of his or her service as a public
3 employee" means 1 or more of the following:

4 (i) A felony resulting from the misuse of public funds.

5 (ii) A felony resulting from the receipt of a bribe or other
6 financial benefit in that ~~person's~~**INDIVIDUAL'S** capacity as a
7 public employee.

8 (b) "Member" means a member, vested former member, ~~or~~ deferred

1 member, **OR PARTICIPANT** of a retirement system.

2 (c) "Retirant" means ~~a person~~ **AN INDIVIDUAL** who has retired
3 with a retirement benefit payable from a retirement system.

4 (d) "Retirement benefit" means an annuity, a retirement
5 allowance, a pension, **A BENEFIT FROM EMPLOYER CONTRIBUTIONS TO A**
6 **DEFINED CONTRIBUTION PLAN**, an optional benefit, a postretirement
7 benefit, and any other right accrued or accruing to a member under
8 a retirement system. Retirement benefit does not include health
9 benefits provided to a retirant or his or her beneficiaries by a
10 retirement system.

11 (e) "Retirement system" means a public employee retirement
12 system established by this state or a political subdivision of this
13 state.

14 Sec. 3. A member or retirant who, **BEFORE THE EFFECTIVE DATE OF**
15 **THE AMENDATORY ACT THAT ADDED SECTION 4A**, is convicted of or ~~who~~
16 enters a nolo contendere plea accepted by a court for a felony
17 arising out of his or her service as a public employee is
18 considered to have breached the public trust and may have his or
19 her rights to an otherwise vested retirement benefit and all
20 accumulated **EMPLOYER** contributions, **INCLUDING EARNINGS ON THE**
21 **EMPLOYER CONTRIBUTIONS**, standing to that ~~person's~~ **INDIVIDUAL'S**
22 credit in the retirement system forfeited as provided in this act.
23 **A MEMBER OR RETIRANT WHO, ON OR AFTER THE EFFECTIVE DATE OF THE**
24 **AMENDATORY ACT THAT ADDED SECTION 4A, IS CONVICTED OF OR ENTERS A**
25 **NOLO CONTENDERE PLEA ACCEPTED BY A COURT FOR A FELONY ARISING OUT**
26 **OF HIS OR HER SERVICE AS A PUBLIC EMPLOYEE IS CONSIDERED TO HAVE**
27 **BREACHED THE PUBLIC TRUST AND MUST HAVE HIS OR HER RIGHTS TO AN**

1 OTHERWISE VESTED RETIREMENT BENEFIT AND ALL ACCUMULATED EMPLOYER
2 CONTRIBUTIONS, INCLUDING EARNINGS ON THE EMPLOYER CONTRIBUTIONS,
3 STANDING TO THAT INDIVIDUAL'S CREDIT IN THE RETIREMENT SYSTEM
4 FORFEITED AS PROVIDED IN THIS ACT. This act applies only to the
5 retirement system of which the ~~person~~ INDIVIDUAL was a member or
6 retirant at the time the felony was committed and only to the
7 retirement system established by the entity affected by the felony.

8 Sec. 4. (1) If a member or retirant, **BEFORE THE EFFECTIVE DATE**
9 **OF THE AMENDATORY ACT THAT ADDED SECTION 4A**, is convicted of or
10 enters a nolo contendere plea accepted by the court for a felony
11 arising out of his or her service as a public employee, the court
12 may order forfeiture as provided in this section. **IF A MEMBER OR**
13 **RETIRANT, ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
14 **ADDED SECTION 4A, IS CONVICTED OF OR ENTERS A NOLO CONTENDERE PLEA**
15 **ACCEPTED BY THE COURT FOR A FELONY ARISING OUT OF HIS OR HER**
16 **SERVICE AS A PUBLIC EMPLOYEE, THE COURT MUST ORDER FORFEITURE AS**
17 **PROVIDED IN THIS SECTION.** If a court orders forfeiture under this
18 section, the **COURT SHALL DETERMINE THE EXTENT TO WHICH A FORFEITURE**
19 **UNDER THIS ACT AFFECTS THE VESTED STATUS OF THE MEMBER OR RETIRANT**
20 **UNDER THE TERMS OF THE RETIREMENT SYSTEM. AN** order ~~shall~~ **UNDER THIS**
21 **SECTION MUST** contain all of the following, as applicable:

22 (a) The portion of the member's or retirant's retirement
23 benefit under a retirement system established by that ~~person's~~
24 **INDIVIDUAL'S** employer at the time the act or acts that resulted in
25 the felony were committed that accrued to ~~that~~ **THE** member or
26 retirant on or after the date the first act that resulted in the
27 felony was committed is forfeited.

1 (b) The member's or retirant's accumulated contributions
2 standing to that ~~person's~~ **INDIVIDUAL'S** credit in the individual
3 account established for that purpose in the retirement system ~~shall~~
4 **MUST** be refunded to the member or retirant.

5 (c) ~~The~~ **EXCEPT FOR A RETIREMENT BENEFIT THAT IS A BENEFIT FROM**
6 **EMPLOYER CONTRIBUTIONS TO A DEFINED CONTRIBUTION PLAN FORFEITED**
7 **UNDER SUBDIVISION (A), THE** retirement system shall pay to an
8 individual, if any, who would otherwise be a beneficiary of the
9 member or retirant whose retirement benefit is being forfeited
10 under this act an actuarially equivalent monthly retirement
11 allowance at the age ~~that~~ **THE** member or retirant would have become
12 eligible for unreduced retirement benefits under that retirement
13 system.

14 (d) The retirement system shall provide hospitalization and
15 medical coverage insurance to the member or retirant whose
16 retirement benefit is being forfeited under this act and to his or
17 her beneficiaries in the same manner and under the same
18 restrictions as is provided to other retirants and beneficiaries of
19 that retirement system.

20 (2) If a court enters an order described in subsection (1),
21 the clerk of the court shall deliver the order to the retirement
22 system.

23 **SEC. 4A. (1) A RETIREMENT BENEFIT SUBJECT TO FORFEITURE UNDER**
24 **THIS ACT MAY BE FROZEN PURSUANT TO A FREEZING ORDER ISSUED BY THE**
25 **COURT ON A SHOWING OF PROBABLE CAUSE THAT THE RETIREMENT BENEFIT IS**
26 **SUBJECT TO FORFEITURE.**

27 (2) **ON AN EX PARTE APPLICATION BY THE PROSECUTING AGENCY, THE**

1 COURT MAY DETERMINE EX PARTE WHETHER THERE IS PROBABLE CAUSE TO
2 BELIEVE THAT A MEMBER'S OR RETIRANT'S RETIREMENT BENEFIT IS SUBJECT
3 TO FORFEITURE UNDER THIS ACT AND THAT NOTICE TO THE MEMBER OR
4 RETIRANT BEFORE A FREEZING OF THE RETIREMENT BENEFIT WOULD CAUSE
5 THE LOSS OF THE RETIREMENT BENEFIT SUBJECT TO FORFEITURE UNDER THIS
6 ACT. IF THE COURT FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE
7 THAT THE RETIREMENT BENEFIT IS SUBJECT TO FORFEITURE AND TO BELIEVE
8 THAT PRIOR NOTICE WOULD CAUSE LOSS OF THE RETIREMENT BENEFIT, THE
9 COURT SHALL ISSUE A FREEZING ORDER FREEZING THE RETIREMENT BENEFIT.

10 (3) IF A COURT ENTERS A FREEZING ORDER UNDER THIS SECTION, THE
11 CLERK OF THE COURT SHALL DELIVER THE FREEZING ORDER TO THE
12 RETIREMENT SYSTEM.

13 (4) AS USED IN THIS SECTION, "PROSECUTING AGENCY" MEANS THE
14 ATTORNEY GENERAL OF THIS STATE, OR HIS OR HER DESIGNEE, OR THE
15 PROSECUTING ATTORNEY OF A COUNTY, OR HIS OR HER DESIGNEE.

16 Sec. 5. (1) The retirement system shall comply with an order
17 of the court described in section 4 **OR 4A**. The retirement system
18 shall not pay to a member or retirant whose retirement benefit is
19 forfeited **OR FROZEN** under this act any retirement benefits on or
20 after the day the governing body of the retirement system receives
21 the order of the court under section 4 **OR 4A**.

22 (2) A retirement system shall comply with any subsequent
23 orders of a court based ~~upon~~ **ON** an appeal of an order previously
24 submitted to the retirement system under this act.

25 (3) A retirement system that complies with a court order under
26 this act is released and discharged from any ~~and all~~ liability
27 pertaining to retirement benefits arising on account of the former

1 member's or retirant's service to the employer ~~upon~~**ON** receipt of
2 the order of the court under section 4.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.