

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

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

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

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

13 Sec. 3. A member or retirant who is convicted of or who enters
14 a nolo contendere plea accepted by a court for a felony arising out
15 of his or her service as a public employee is considered to have
16 breached the public trust and ~~may~~ **MUST** have his or her rights to an
17 otherwise vested retirement benefit and all accumulated **EMPLOYER**
18 contributions, **INCLUDING EARNINGS ON THE EMPLOYER CONTRIBUTIONS**,
19 standing to that person's credit in the retirement system forfeited
20 as provided in this act. This act applies only to the retirement
21 system of which the ~~person~~ **INDIVIDUAL** was a member or retirant at
22 the time the felony was committed and only to the retirement system
23 established by the entity affected by the felony.

24 Sec. 4. (1) If a member or retirant is convicted of or enters
25 a nolo contendere plea accepted by the court for a felony arising
26 out of his or her service as a public employee, the court ~~may~~ **SHALL**
27 order forfeiture as provided in this section. If a court orders

1 forfeiture under this section, the order ~~shall~~**MUST** contain all of
2 the following, as applicable:

3 (a) The portion of the member's or retirant's retirement
4 benefit under a retirement system established by that ~~person's~~
5 **INDIVIDUAL'S** employer at the time the act or acts that resulted in
6 the felony were committed that accrued to ~~that~~**THE** member or
7 retirant on or after the date the first act that resulted in the
8 felony was committed is forfeited.

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

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

22 (d) The retirement system shall provide hospitalization and
23 medical coverage insurance to the member or retirant whose
24 retirement benefit is being forfeited under this act and to his or
25 her beneficiaries in the same manner and under the same
26 restrictions as is provided to other retirants and beneficiaries of
27 that retirement system.

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

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

8 (2) ON AN EX PARTE APPLICATION BY THE PROSECUTING AGENCY, THE
9 COURT MAY DETERMINE EX PARTE WHETHER THERE IS PROBABLE CAUSE TO
10 BELIEVE THAT A MEMBER'S OR RETIRANT'S RETIREMENT BENEFIT IS SUBJECT
11 TO FORFEITURE UNDER THIS ACT AND THAT NOTICE TO THE MEMBER OR
12 RETIRANT BEFORE A FREEZING OF THE RETIREMENT BENEFIT WOULD CAUSE
13 THE LOSS OF THE RETIREMENT BENEFIT SUBJECT TO FORFEITURE UNDER THIS
14 ACT. IF THE COURT FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE
15 THAT THE RETIREMENT BENEFIT IS SUBJECT TO FORFEITURE AND TO BELIEVE
16 THAT PRIOR NOTICE WOULD CAUSE LOSS OF THE RETIREMENT BENEFIT, THE
17 COURT SHALL ISSUE A FREEZING ORDER FREEZING THE RETIREMENT BENEFIT.

18 (3) IF A COURT ENTERS A FREEZING ORDER UNDER THIS SECTION, THE
19 CLERK OF THE COURT SHALL DELIVER THE FREEZING ORDER TO THE
20 RETIREMENT SYSTEM.

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

24 Sec. 5. (1) The retirement system shall comply with an order
25 of the court described in section 4 **OR 4A**. The retirement system
26 shall not pay to a member or retirant whose retirement benefit is
27 forfeited **OR FROZEN** under this act any retirement benefits on or

1 after the day the governing body of the retirement system receives
2 the order of the court under section 4 **OR 4A.**

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

6 (3) A retirement system that complies with a court order under
7 this act is released and discharged from any ~~and all~~ liability
8 pertaining to retirement benefits arising on account of the former
9 member's or retirant's service to the employer ~~upon~~**ON** receipt of
10 the order of the court under section 4.

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