

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 153
Committee Substitute Favorable 3/31/11
Third Edition Engrossed 4/6/11

Short Title: No Public Retirement for Convicted Felons.

(Public)

Sponsors:

Referred to:

February 22, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT A PERSON WHO HAS BEEN CONVICTED OF A FELONY
3 FROM RECEIVING RETIREMENT BENEFITS FROM THE TEACHERS' AND STATE
4 EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL
5 EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL
6 RETIREMENT SYSTEM, OR THE LEGISLATIVE RETIREMENT SYSTEM.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Article 1 of Chapter 135 of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 135-18.11. Forfeiture of retirement benefits for certain felonies related to employment**
11 **or holding office.**

12 (a) Except as provided in G.S. 135-4(ii), the Board of Trustees shall not pay any
13 retirement benefits or allowances, except for a return of member contributions plus interest, to
14 any member who is convicted of any felony under federal law or the laws of this State if all of
15 the following apply:

16 (1) The offense is committed while the member is an employee, a teacher, or an
17 elected or appointed officer of a participating employer.

18 (2) The individual's conduct is directly related to the individual's office or
19 employment.

20 (b) Subdivision (a)(2) of this section shall apply to felony convictions where the court
21 finds under G.S. 15A-1340.16(d)(9) or other applicable state or federal procedure that the
22 individual's conduct is directly related to the individual's office or employment.

23 (c) If a member or former member whose benefits under the System were forfeited
24 under this section, except for the return of member contributions plus interest, subsequently
25 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any
26 reason, then the member or former member may seek a reversal of the benefit forfeiture by
27 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a
28 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon payment
29 of all accumulated contributions plus interest. Repayment of all accumulated contributions that
30 have been received by the individual under the forfeiture provisions of this section must be
31 made in a total lump sum payment with interest compounded annually at a rate of six and one-
32 half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment.
33 An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service
34 credit forfeited."

35 SECTION 2. G.S. 135-4 is amended by adding a new subsection to read:



1 "(ii) If a member who is an employee, a teacher, or an officer of a participating employer
2 and has not vested in this System on July 1, 2011, is convicted of an offense listed in
3 G.S. 135-18.11 for acts committed after July 1, 2011, then that member shall forfeit all benefits
4 under this System, except for a return of member contributions plus interest. If a member who
5 is an employee or a teacher and has vested in this System on July 1, 2011, is convicted of an
6 offense listed in G.S. 135-18.11 for acts committed after July 1, 2011, then that member is not
7 entitled to any creditable service that accrued after July 1, 2011."

8 **SECTION 3.** Article 3 of Chapter 128 of the General Statutes is amended by
9 adding a new section to read:

10 **§ 128-38.5. Forfeiture of retirement benefits for certain felonies related to employment**
11 **or holding office.**

12 (a) Except as provided in G.S. 128-26(x), the Board of Trustees shall not pay any
13 retirement benefits or allowances, except for a return of member contributions plus interest, to
14 any member who is convicted of any felony under federal law or the laws of this State if all of
15 the following apply:

16 (1) The offense is committed while the member is an employee, a teacher, or an
17 officer of a participating employer.

18 (2) The individual's conduct is directly related to the individual's office or
19 employment.

20 (b) Subdivision (a)(2) of this section shall apply to felony convictions where the court
21 finds under G.S. 15A-1340.16(d)(9) or other applicable state or federal procedure that the
22 individual's conduct is directly related to the individual's office or employment.

23 (c) If a member or former member whose benefits under the System were forfeited
24 under this section, except for the return of member contributions plus interest, subsequently
25 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any
26 reason, then the member or former member may seek a reversal of the benefit forfeiture by
27 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a
28 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon payment
29 of all accumulated contributions plus interest. Repayment of all accumulated contributions that
30 have been received by the individual under the forfeiture provisions of this section must be
31 made in a total lump sum payment with interest compounded annually at a rate of six and one-
32 half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment.
33 An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service
34 credit forfeited."

35 **SECTION 4.** G.S. 128-26 is amended by adding a new subsection to read:

36 "(x) If a member who is an employee or an elected or appointed officer of the employer
37 and has not vested in this System on July 1, 2011, is convicted of an offense listed in
38 G.S. 126-38.5 for acts committed after July 1, 2011, then that member shall forfeit all benefits
39 under this System, except for a return of member contributions plus interest. If a member who
40 is an employee or a teacher and has vested in this System on July 1, 2011, is convicted of an
41 offense listed in G.S. 126-38.5 for acts committed after July 1, 2011, then that member is not
42 entitled to any creditable service that accrued after July 1, 2011."

43 **SECTION 5.** Article 4 of Chapter 135 of the General Statutes is amended by
44 adding a new section to read:

45 **§ 135-75.2. Forfeiture of retirement benefits for certain felonies related to employment**
46 **or holding office.**

47 (a) Except as provided in G.S. 135-56(j), the Board of Trustees shall not pay any
48 retirement benefits or allowances, except for a return of member contributions plus interest, to
49 any member who is convicted of any felony under federal law or the laws of this State if all of
50 the following apply:

1 (1) The offense is committed while the member is a judge, a district attorney, a
2 clerk of superior court, a public defender, or the Director of Indigent
3 Defense Services.

4 (2) The individual's conduct is directly related to the individual's office or
5 employment.

6 (b) Subdivision (a)(2) of this section shall apply to felony convictions where the court
7 finds under G.S. 15A-1340.16(d)(9) or other applicable state or federal procedure that the
8 individual's conduct is directly related to the individual's office or employment.

9 (c) If a member or former member whose benefits under the System were forfeited
10 under this section, except for the return of member contributions plus interest, subsequently
11 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any
12 reason, then the member or former member may seek a reversal of the benefit forfeiture by
13 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a
14 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon payment
15 of all accumulated contributions plus interest. Repayment of all accumulated contributions that
16 have been received by the individual under the forfeiture provisions of this section must be
17 made in a total lump sum payment with interest compounded annually at a rate of six and one-
18 half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment.
19 An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service
20 credit forfeited."

21 **SECTION 6.** G.S. 135-56 is amended by adding a new subsection to read:

22 "(j) If a member who is a judge, district attorney, clerk of superior court, public
23 defender, or the Director of Indigent Defense Services and has not vested in this System on
24 July 1, 2011, is convicted of an offense listed in G.S. 135-75.2 for acts committed after July 1,
25 2011, then that member shall forfeit all benefits under this System, except for a return of
26 member contributions plus interest. If a member who is a judge, district attorney, clerk of
27 superior court, public defender, or the Director of Indigent Defense Services and has vested in
28 this System on July 1, 2011, is convicted of an offense listed in G.S. 135-75.2 for acts
29 committed after July 1, 2011, then that member is not entitled to any creditable service that
30 accrued after July 1, 2011."

31 **SECTION 7.** Article 1A of Chapter 120 of the General Statutes is amended by
32 adding a new section to read:

33 "**§ 120-4.34. Forfeiture of retirement benefits for certain felonies related to employment**
34 **or holding office.**

35 (a) Except as provided in G.S. 120-4.12(g), the Board of Trustees shall not pay any
36 retirement benefits or allowances, except for a return of member contributions plus interest, to
37 any member who is convicted of any felony under federal law or the laws of this State if all of
38 the following apply:

39 (1) The offense is committed while the member is serving as a member of the
40 General Assembly.

41 (2) The individual's conduct is directly related to the individual's office or
42 employment.

43 (b) Subdivision (a)(2) of this section shall apply to felony convictions where the court
44 finds under G.S. 15A-1340.16(d)(9) or other applicable state or federal procedure that the
45 individual's conduct is directly related to the individual's office or employment.

46 (c) If a member or former member whose benefits under the System were forfeited
47 under this section, except for the return of member contributions plus interest, subsequently
48 receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any
49 reason, then the member or former member may seek a reversal of the benefit forfeiture by
50 presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a
51 reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon payment

1 of all accumulated contributions plus interest. Repayment of all accumulated contributions that
2 have been received by the individual under the forfeiture provisions of this section must be
3 made in a total lump sum payment with interest compounded annually at a rate of six and one-
4 half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment.
5 An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service
6 credit forfeited."

7 **SECTION 8.** G.S. 120-4.12 is amended by adding a new subsection to read:

8 "(g) If a member who has not vested in this System on July 1, 2011, is convicted of an
9 offense listed in G.S. 120-4.34 for acts committed after July 1, 2011, then that member shall
10 forfeit all benefits under this System, except for a return of member contributions plus interest.
11 If a member who is a present member of the General Assembly and has vested in this System
12 on July 1, 2011, is convicted of an offense listed in G.S. 120-4.34 for acts committed after July
13 1, 2011, then that member is not entitled to any creditable service that accrued after July 1,
14 2011."

15 **SECTION 9.** G.S. 15A-1340.16(d)(9) reads as rewritten:

16 "(d) Aggravating Factors. – The following are aggravating factors:

17 ...

18 (9) The defendant held public elected or appointed office or public employment
19 at the time of the offense and the offense directly related to the conduct of
20 the ~~office-office~~ or employment.

21"

22 **SECTION 10.** G.S. 15A-1340.16 is amended by adding a new subsection to read:

23 "(f) If the court determines that an aggravating factor under subdivision (d)(9) of this
24 section has been proven, the court shall notify the State Treasurer of the fact of the conviction
25 as well as the finding of the aggravating factor. The indictment charging the defendant with the
26 underlying offense must include notice that the State seeks to prove the defendant acted in
27 accordance with subdivision (d)(9) of this section and that the State will seek to prove that as
28 an aggravating factor."

29 **SECTION 11.** The State Treasurer shall negotiate a memorandum of agreement
30 with the United States Attorneys for the Eastern, Middle, and Western Districts of North
31 Carolina whereby the prosecutors will notify the State Treasurer of convictions under
32 G.S. 135-18.11(b), 128-38.5(b), 135-75.2(b), and 120-4.34(b).

33 **SECTION 12.** This act becomes effective July 1, 2011, and applies to offenses
34 committed on or after that date.