

## PUBLIC EMPLOYEE RETIREMENT BENEFITS FORFEITURE ACT

### Act 350 of 1994

AN ACT to provide for the forfeiture of retirement benefits by public employees under certain circumstances; to prescribe the powers and duties of certain retirement systems, state departments, courts, public officials, and public employees; and to prescribe penalties and provide remedies.

**History:** 1994, Act 350, Eff. Mar. 30, 1995

*The People of the State of Michigan enact:*

#### 38.2701 Short title.

##### Sec. 1.

This act shall be known and may be cited as the "public employee retirement benefits forfeiture act".

**History:** 1994, Act 350, Eff. Mar. 30, 1995

#### 38.2702 Definitions.

##### Sec. 2.

As used in this act:

- (a) "Felony arising out of his or her service as a public employee" means 1 or more of the following:
  - (i) A felony resulting from the misuse of public funds.
  - (ii) A felony resulting from the receipt of a bribe or other financial benefit in that individual's capacity as a public employee.
- (b) "Member" means a member, vested former member, deferred member, or participant of a retirement system.
- (c) "Retirant" means an individual who has retired with a retirement benefit payable from a retirement system.
- (d) "Retirement benefit" means an annuity, a retirement allowance, a pension, a benefit from employer contributions to a defined contribution plan, an optional benefit, a postretirement benefit, and any other right accrued or accruing to a member under a retirement system. Retirement benefit does not include health benefits provided to a retirant or his or her beneficiaries by a retirement system.
- (e) "Retirement system" means a public employee retirement system established by this state or a political subdivision of this state.

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 467, Imd. Eff. Dec. 26, 1996 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017

#### 38.2703 Forfeiture of retirement rights.

##### Sec. 3.

A member or retirant who, before the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by a court for a felony arising out of his or her service as a public employee is considered to have breached the public trust and may have his or her rights to an otherwise vested retirement benefit and all accumulated employer contributions, including earnings on the employer contributions, standing to that individual's credit in the retirement system forfeited as provided in this act. A member or retirant

who, on or after the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by a court for a felony arising out of his or her service as a public employee is considered to have breached the public trust and must have his or her rights to an otherwise vested retirement benefit and all accumulated employer contributions, including earnings on the employer contributions, standing to that individual's credit in the retirement system forfeited as provided in this act. This act applies only to the retirement system of which the individual was a member or retirant at the time the felony was committed and only to the retirement system established by the entity affected by the felony.

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017

### **38.2704 Court; forfeiture order; contents; delivery to retirement system.**

#### **Sec. 4.**

(1) If a member or retirant, before the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by the court for a felony arising out of his or her service as a public employee, the court may order forfeiture as provided in this section. If a member or retirant, on or after the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by the court for a felony arising out of his or her service as a public employee, the court must order forfeiture as provided in this section. If a court orders forfeiture under this section, the court shall determine the extent to which a forfeiture under this act affects the vested status of the member or retirant under the terms of the retirement system. An order under this section must contain all of the following, as applicable:

(a) The portion of the member's or retirant's retirement benefit under a retirement system established by that individual's employer at the time the act or acts that resulted in the felony were committed that accrued to the member or retirant on or after the date the first act that resulted in the felony was committed is forfeited.

(b) The member's or retirant's accumulated contributions standing to that individual's credit in the individual account established for that purpose in the retirement system must be refunded to the member or retirant.

(c) Except for a retirement benefit that is a benefit from employer contributions to a defined contribution plan forfeited under subdivision (a), the retirement system shall pay to an individual, if any, who would otherwise be a beneficiary of the member or retirant whose retirement benefit is being forfeited under this act an actuarially equivalent monthly retirement allowance at the age the member or retirant would have become eligible for unreduced retirement benefits under that retirement system.

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

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

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 467, Imd. Eff. Dec. 26, 1996 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017

### **38.2704a Freezing of retirement benefit; court order; delivery to retirement system; "prosecuting agency" defined.**

#### **Sec. 4a.**

(1) A retirement benefit subject to forfeiture under this act may be frozen pursuant to a freezing order issued by the court on a showing of probable cause that the retirement benefit is subject to forfeiture.

(2) On an ex parte application by the prosecuting agency, the court may determine ex parte whether there is probable cause to believe that a member's or retirant's retirement benefit is subject to forfeiture under this act and that notice to the member or retirant before a freezing of the retirement benefit would cause the loss of the retirement benefit subject to forfeiture under this act. If the court finds that there is probable cause to believe that the retirement benefit is subject to forfeiture and to believe that prior notice would cause loss of the retirement benefit, the court shall issue a freezing order freezing the retirement benefit.

(3) If a court enters a freezing order under this section, the clerk of the court shall deliver the freezing order to the retirement system.

(4) As used in this section, "prosecuting agency" means the attorney general of this state, or his or her designee, or the prosecuting attorney of a county, or his or her designee.

**History:** Add. 2017, Act 43, Eff. Sept. 5, 2017

### **38.2705 Retirement system; compliance with court order.**

#### **Sec. 5.**

(1) The retirement system shall comply with an order of the court described in section 4 or 4a. The retirement system shall not pay to a member or retirant whose retirement benefit is forfeited or frozen under this act any retirement benefits on or after the day the governing body of the retirement system receives the order of the court under section 4 or 4a.

(2) A retirement system shall comply with any subsequent orders of a court based on an appeal of an order previously submitted to the retirement system under this act.

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

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 467, Imd. Eff. Dec. 26, 1996 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017