

1 **CERTAIN EMPLOYEE'S FORFEIT OF RETIREMENT FOR**
2 **EMPLOYMENT RELATED OFFENSES**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Daniel McCay**

6 Senate Sponsor: Todd Weiler

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah State Retirement and Insurance Benefit Act by amending
11 provisions for receiving a retirement allowance.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ provides that an elected official and certain other state employees who are members
16 of a Utah state retirement system or plan are subject to forfeiture of retirement
17 benefits after being convicted of certain employment related offenses;
- 18 ▶ provides for notifications to the Utah State Retirement Office;
- 19 ▶ provides for certain determinations by a participating employer on whether the
20 elected official's or employee's conviction is for an employment related offense;
- 21 ▶ provides an appeals process;
- 22 ▶ provides for certain rulemaking; and
- 23 ▶ provides a severability clause.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 [49-11-1201](#), Utah Code Annotated 1953



32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **49-11-1201** is enacted to read:

34 **Part 12. Forfeit of Retirement Benefits**

35 **49-11-1201. Loss of retirement benefits for certain officials for employment**
36 **related offense convictions -- Notifications -- Investigations -- Appeals.**

37 (1) As used in this section:

38 (a) "Convicted" means a conviction by plea or by verdict, including a plea of guilty or a
39 plea of no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
40 regardless of whether the charge was, or is, subsequently reduced or dismissed in accordance
41 with the plea in abeyance agreement.

42 (b) "Employee" means a member of a Utah state retirement system or plan who:

43 (i) is an elected official;

44 (ii) as a result of being in a confidential relationship or position of trust with an elected
45 official, is schedule AD or AG under Section [67-19-15](#); or

46 (iii) is an appointed executive director as that term is defined in Section [67-22-2](#).

47 (c) "Employment related offense" means dishonesty, fraud, theft, or malfeasance in
48 office:

49 (i) during the performance of the employee's duties;

50 (ii) within the scope of the employee's employment; or

51 (iii) under color of the employee's authority.

52 (2) (a) Notwithstanding any other provision of this title, an employee, and the
53 employee's beneficiaries are not entitled to a retirement allowance, retirement related
54 contribution, accrual of service credit, or other retirement related benefit from a system or plan
55 under this title in accordance with this section.

56 (b) The forfeiture of retirement related benefits under Subsection (2)(a) does not
57 include the employee's contribution to a defined contribution plan.

58 (3) An employee is not entitled to benefits described under Subsection (2)(a):

59 (a) if the employee is convicted of an employment related offense;
 60 (b) beginning on the day on which the employment related offense occurred; and
 61 (c) until the employee is either:
 62 (i) re-elected to office; or
 63 (ii) (A) terminated from the position for which the employee was found to have
 64 committed an employment related offense; and
 65 (B) rehired or hired as an employee who is eligible to be a member of a Utah state
 66 retirement system or plan.

67 (4) The employee's participating employer shall:

68 (a) immediately notify the office:

69 (i) if an employee is charged with an offense that is or may be an employment related
 70 offense under this section; and

71 (ii) if the employee described in Subsection (4)(a)(i) is acquitted of the offense that is
 72 or may be an employment related offense under this section;

73 (b) if the employee is convicted of an offense that may be an employment related
 74 offense:

75 (i) conduct an investigation ~~H→~~ , **which may rely on the conviction,** ~~←H~~ to determine:

76 (A) whether the conviction is for an employment related offense; and

77 (B) the date on which the employment related offense was initially committed; and

78 (ii) after the period of time for an appeal by an employee under Subsection

78a ~~H→ [(4)(c)] (5) ←H~~ .

79 immediately notify the office of the employer's determination under this Subsection (4)(b).

80 (5) An employee may appeal ~~H→~~ **[an] the employee's participating** ~~←H~~ employer's
 80a determination under Subsection (4)(b) in

81 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

82 (6) Upon receiving a notification from a participating employer that the participating
 83 employer has made a determination under Subsection (4)(b) that the conviction was for an
 84 employment related offense, the office shall immediately cancel the retirement allowance
 85 described in Subsection (2)(a) and deny any accrued benefits earned by the employee beginning
 86 on the date of the initial employment related offense determined under Subsection (4)(b).

87 (7) This section applies to an employee who is convicted on or after the effective date
 88 of this act, for an employment related offense.

89 (8) The board may make rules to implement this section.

90 (9) If any provision of this section, or the application of any provision to any person or
91 circumstance, is held invalid, the remainder of this section shall be given effect without the
92 invalid provision or application.

Legislative Review Note
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Office of Legislative Research and General Counsel