

**RETIREMENT AMENDMENTS FOR FELONY CONVICTION**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel McCay**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions for receiving retirement benefits.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides that a member shall forfeit certain retirement benefits under a system or plan administered by the Utah State Retirement Board if the member is convicted of certain employment related offenses;
- ▶ provides for notifications to the Utah State Retirement Office;
- ▶ provides for certain determinations by a participating employer on whether the member's conviction is for an employment related offense;
- ▶ provides an appeals process;
- ▶ provides for certain rulemaking; and
- ▶ provides a severability clause.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 ENACTS:

29 **49-11-1201**, Utah Code Annotated 1953



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

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

33 **49-11-1201. Forfeiture of retirement benefits for employees for employment**  
34 **related offense convictions -- Notifications -- Investigations -- Appeals.**

35 (1) As used in this section:

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

40 (b) "Employee" means a member of a system or plan administered by the board.

41 (c) "Employment related offense" means a felony committed during employment or the  
42 term of an elected or appointed office with a participating employer that is:

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

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

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

46 (2) (a) Notwithstanding any other provision of this title, an employee shall forfeit  
47 accrual of service credit, employer retirement related contributions, including employer  
48 contributions to the employer sponsored defined contribution plans, or other retirement related  
49 benefits from a system or plan under this title in accordance with this section.

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

52 (3) An employee shall forfeit the benefits described under Subsection (2)(a):

53 (a) if the employee is convicted of an employment related offense;

54 (b) beginning on the day on which the employment related offense occurred; and

55 (c) until the employee is either:

56 (i) re-elected or reappointed to office; or

57 (ii) (A) terminated from the position for which the employee was found to have  
58 committed an employment related offense; and

59 (B) rehired or hired as an employee who is eligible to be a member of a Utah state  
60 retirement system or plan.

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

62 (a) immediately notify the office:

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

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

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

69 (i) conduct an investigation, which may rely on the conviction, to determine:

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

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

72 (ii) after the period of time for an appeal by an employee under Subsection (5),  
73 immediately notify the office of the employer's determination under this Subsection (4)(b).

74 (5) An employee may appeal the employee's participating employer's determination  
75 under Subsection (4)(b) in accordance with Title 63G, Chapter 4, Administrative Procedures  
76 Act.

77 (6) Upon receiving a notification from a participating employer that the participating  
78 employer has made a determination under Subsection (4)(b) that the conviction was for an  
79 employment related offense, the office shall immediately forfeit any service credit, employer  
80 retirement related contributions, including employer contributions to the employer sponsored  
81 contribution plans, or other retirement related benefits accrued by or made for the benefit of the  
82 employee, beginning on the date of the initial employment related offense determined under  
83 Subsection (4)(b).

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

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

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

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**