

**RETIREMENT FORFEITURE FOR EMPLOYMENT RELATED
OFFENSES**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: Brian Zehnder

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions relating to the forfeiture of retirement benefits.

Highlighted Provisions:

This bill:

- ▶ authorizes a district attorney, a county attorney, the attorney general's office, or the state auditor to notify the Utah State Retirement Office and the employee's participating employer if an employee is charged with an offense that is or may be an employment related offense;
- ▶ requires the participating employer who received the notification to make certain reports to the entity that provided the notification; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

49-11-1401, as enacted by Laws of Utah 2016, Chapter 413

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

30 Section 1. Section **49-11-1401** is amended to read:

31 **49-11-1401. Forfeiture of retirement benefits for employees for employment**
32 **related offense convictions -- Notifications -- Investigations -- Appeals.**

33 (1) As used in this section:

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

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

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

- 41 (i) during the performance of the employee's duties;
- 42 (ii) within the scope of the employee's employment; or
- 43 (iii) under color of the employee's authority.

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

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

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

- 51 (a) if the employee is convicted of an employment related offense;
- 52 (b) beginning on the day on which the employment related offense occurred; and
- 53 (c) until the employee is either:
 - 54 (i) re-elected or reappointed to office; or
 - 55 (ii) (A) terminated from the position for which the employee was found to have
56 committed an employment related offense; and
 - 57 (B) rehired or hired as an employee who is eligible to be a member of a Utah state

58 retirement system or plan.

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

60 (a) immediately notify the office:

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

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

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

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

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

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

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

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

75 (6) (a) Notwithstanding Subsection (4), a district attorney, a county attorney, the
76 attorney general's office, or the state auditor may notify the office and the employee's
77 participating employer if an employee is charged with an offense that is or may be an
78 employment related offense under this section.

79 (b) If the employee's participating employer receives a notification under Subsection
80 (6)(a), the participating employer shall immediately report to the entity that provided the
81 notification under Subsection (6)(a):

82 (i) if the employee is acquitted of the offense;

83 (ii) if the employee is convicted of an offense that may be an employment related
84 offense; and

85 (iii) when the participating employer has concluded its duties under this section if the

86 employee is convicted, including conducting an investigation, making a determination under
87 Subsection (4)(b) that the conviction was for an employment related offense, and notifying the
88 office under Subsection (7).

89 (c) The notifying entity under Subsection (6)(a) may assist the employee's participating
90 employer with the investigation and determination described under Subsection (4)(b).

91 [~~6~~] (7) Upon receiving a notification from a participating employer that the
92 participating employer has made a determination under Subsection (4)(b) that the conviction
93 was for an employment related offense, the office shall immediately forfeit any service credit,
94 employer retirement related contributions, including employer contributions to the employer
95 sponsored contribution plans, or other retirement related benefits accrued by or made for the
96 benefit of the employee, beginning on the date of the initial employment related offense
97 determined under Subsection (4)(b).

98 [~~7~~] (8) This section applies to an employee who is convicted on or after the effective
99 date of this act for an employment related offense.

100 [~~8~~] (9) The board may make rules to implement this section.

101 [~~9~~] (10) If any provision of this section, or the application of any provision to any
102 person or circumstance, is held invalid, the remainder of this section shall be given effect
103 without the invalid provision or application.

104 Section 2. **Effective date.**

105 This bill takes effect on July 1, 2018.