

**RETIREMENT FORFEITURE FOR EMPLOYMENT RELATED
OFFENSES**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: _____

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 if an employee is convicted of an offense that is an employment related offense after conducting an investigation to determine whether the conviction is for an employment related offense; 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



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

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

30 **49-11-1401. Forfeiture of retirement benefits for employees for employment**
31 **related offense convictions -- Notifications -- Investigations -- Appeals.**

32 (1) As used in this section:

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

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

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

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

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

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

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

- 50 (a) if the employee is convicted of an employment related offense;
- 51 (b) beginning on the day on which the employment related offense occurred; and
- 52 (c) until the employee is either:
 - 53 (i) re-elected or reappointed to office; or
 - 54 (ii) (A) terminated from the position for which the employee was found to have
55 committed an employment related offense; and

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

58 (4) (a) The employee's participating employer shall:

59 ~~[(a)]~~ (i) immediately notify the office:

60 ~~[(+)]~~ (A) if an employee is charged with an offense that is or may be an employment
61 related offense under this section; and

62 ~~[(+)]~~ (B) if the employee described in Subsection (4)(a)(i)~~(A)~~ is acquitted of the
63 offense that is or may be an employment related offense under this section; and

64 ~~[(b)]~~ (ii) if the employee is convicted of an offense that may be an employment related
65 offense:

66 ~~[(+)]~~ (A) conduct an investigation, which may rely on the conviction, to determine:
67 ~~[(A)]~~ (I) whether the conviction is for an employment related offense; and
68 ~~[(B)]~~ (II) the date on which the employment related offense was initially committed;

69 and

70 ~~[(+)]~~ (B) 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)]~~(a).
72 (b) Notwithstanding Subsection (4)(a), a district attorney, a county attorney, the
73 attorney general's office, or the state auditor may notify the office if:

74 (i) an employee is convicted of an offense that may be an employment related offense;
75 and

76 (ii) the district attorney, county attorney, attorney general's office, or state auditor
77 conducts an investigation and determines:

78 (A) that the conviction is for an employment related offense; and
79 (B) the date on which the employment related offense was initially committed.

80 (5) An employee may appeal, in accordance with Title 63G, Chapter 4, Administrative
81 Procedures Act:

82 (a) the [employee's] participating employer's determination under Subsection (4)~~[(b)]~~ in
83 accordance with Title 63G, Chapter 4, Administrative Procedures Act.](a); or

84 (b) a district attorney's, a county attorney's, the attorney general's office's, or the state
85 auditor's determination under Subsection (4)(b).

86 (6) Upon receiving a notification from a participating employer [~~that the participating~~
87 ~~employer has made a determination~~], a district attorney, a county attorney, the attorney
88 general's office, or the state auditor that a determination has been made under Subsection (4)(a)
89 or (b) that the conviction was for an employment related offense, the office shall immediately

90 forfeit any service credit, employer retirement related contributions, including employer
91 contributions to the employer sponsored contribution plans, or other retirement related benefits
92 accrued by or made for the benefit of the employee, beginning on the date of the initial
93 employment related offense determined under Subsection (4)(a) or (b).

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

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

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

100 Section 2. **Effective date.**

101 This bill takes effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel