

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-193
HOUSE BILL 153

AN ACT TO PROHIBIT A PERSON WHO HAS BEEN CONVICTED OF A FELONY RELATED TO EMPLOYMENT OR HOLDING OFFICE FROM RECEIVING RETIREMENT BENEFITS FROM THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, THE OPTIONAL RETIREMENT PROGRAM FOR THE UNIVERSITY OF NORTH CAROLINA, THE OPTIONAL RETIREMENT PROGRAM FOR STATE-FUNDED COMMUNITY COLLEGES, THE SUPPLEMENTAL RETIREMENT INCOME PLAN FOR STATE LAW-ENFORCEMENT OFFICERS, AND THE SUPPLEMENTAL RETIREMENT INCOME PLAN FOR LOCAL GOVERNMENTAL LAW-ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 135 of the General Statutes is amended by adding a new section to read:

"§ 135-18.10A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 135-4(ii), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member's conviction is directly related to the member's office or employment.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office or employment.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited."

SECTION 2. G.S. 135-4 is amended by adding a new subsection to read:

"(ii) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012."



SECTION 3. Article 3 of Chapter 128 of the General Statutes is amended by adding a new section to read:

§ 128-38.4A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 128-26(x), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member's conviction is directly related to the member's office or employment.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office or employment.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited."

SECTION 4. G.S. 128-26 is amended by adding a new subsection to read:

"(x) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 126-38.5 for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 126-38.5 for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012."

SECTION 5. Article 4 of Chapter 135 of the General Statutes is amended by adding a new section to read:

§ 135-75.1A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 135-56(j), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member's conviction is directly related to the member's office or employment.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office or employment.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year

of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited."

SECTION 6. G.S. 135-56 is amended by adding a new subsection to read:

"(j) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-75.1A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-75.1A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012."

SECTION 7. Article 1A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-4.33A. Forfeiture of retirement benefits for certain felonies related to employment or holding office.

(a) Except as provided in G.S. 120-4.12(g), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is serving as a member of the General Assembly.
- (2) The conduct resulting in the member's conviction is directly related to the member's office.

(b) Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member's conduct is directly related to the member's office.

(c) If a member or former member whose benefits under the System were forfeited under this section, except for the return of member contributions plus interest, subsequently receives an unconditional pardon of innocence, or the conviction is vacated or set aside for any reason, then the member or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is appropriate, then all benefits will be restored upon repayment of all accumulated contributions plus interest. Repayment of all accumulated contributions that have been received by the individual under the forfeiture provisions of this section must be made in a total lump-sum payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each calendar year from the year of forfeiture to the year of repayment. An individual receiving a reversal of benefit forfeiture must receive reinstatement of the service credit forfeited."

SECTION 8. G.S. 120-4.12 is amended by adding a new subsection to read:

"(g) If a member who is a present member of the General Assembly and who has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 120-4.33A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is a present member of the General Assembly and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 120-4.33A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012."

SECTION 9. G.S. 15A-1340.16(d)(9) reads as rewritten:

"(d) Aggravating Factors. – The following are aggravating factors:

- ...
- (9) The defendant held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office-office or employment.

...."

SECTION 10. G.S. 15A-1340.16 is amended by adding a new subsection to read:

"(f) If the court determines that an aggravating factor under subdivision (9) of subsection (d) of this section has been proven, the court shall notify the State Treasurer of the fact of the conviction as well as the finding of the aggravating factor. The indictment charging the defendant with the underlying offense must include notice that the State seeks to prove the defendant acted in accordance with subdivision (9) of subsection (d) of this section and that the State will seek to prove that as an aggravating factor."

SECTION 11. G.S. 135-5.1 is amended by adding a new subsection to read:

"(h) The Board of Governors of The University of North Carolina shall ensure that the Optional Retirement Program contains benefit forfeiture provisions equivalent to those contained in G.S. 135-18.10A for University personnel who are eligible for membership in the Teachers' and State Employees' Retirement System and have elected participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the Optional Retirement Program trust fund(s)."

SECTION 12. G.S. 135-5.4 is amended by adding a new subsection to read:

"(h) The North Carolina Community College System shall ensure that the Optional Retirement Program for State-funded community colleges contains benefit forfeiture provisions equivalent to those contained in G.S. 135-18.10A for community college personnel eligible for membership in the Teachers' and State Employees' Retirement System and have elected participation in the Optional Retirement Program. Any funds forfeited shall be deposited in the Optional Retirement Program trust fund(s)."

SECTION 13. G.S. 143-166.30 reads as rewritten:

"§ 143-166.30. Retirement benefits for State law-enforcement officers.

...

(d) Supplemental Retirement Income Plan for State Law-Enforcement Officers. – As of January 1, 1985, there shall be created a Supplemental Retirement Income Plan, hereinafter called the "Plan," established for the benefit of all law-enforcement officers employed by the State, who shall be participants. The Board of Trustees of the State Retirement System shall administer the Plan and shall, under the terms and conditions otherwise appearing herein, provide Plan benefits either (i) by establishing a separate trust fund in conformance with Section 401(a), Section 401(k) or other sections of the Internal Revenue Code of 1954 as amended or, (ii) by causing the Plan to affiliate with some master trust fund providing the same benefits for participants. The Plan shall be separate and apart from any retirement systems.

In addition to the contributions transferred from the Law-Enforcement Officers' Retirement System and the contributions otherwise provided for in this Article, participants may make voluntary contributions to the Plan to be credited to the designated individual accounts of participants; provided, in no instance shall the total contributions by a participant exceed ten percent (10%) of a participant's compensation within any calendar year.

All contributions to the Plan shall be credited to the individual accounts of participants, and except as provided in subsection (g1) of this section, shall be fully and immediately vested in the name of the participant, and shall be invested according to each participant's election, as provided by the Board of Trustees, including but not limited to time deposits, and both fixed and variable investments. The Plan may provide for loans to participants, at reasonable rates of interest to be charged, from participants' individual accounts, and may provide for withdrawal of contributions on account of hardship.

The benefit to a participant in the Plan shall be either a lump-sum distribution or a distribution in periodic installments of the participant's account payable under retirement, disability, or termination of employment. Upon the death of a participant there shall be paid the same lump-sum distribution or periodic installments to the surviving spouse of the participant or otherwise to the participant's estate; provided, should a participant instruct the Board of Trustees in writing that he does not wish these benefits to be paid to his spouse or estate, then the benefits shall be paid to the person or persons as the participant may name for this purpose.

Upon retirement, a participant in the Plan may elect to transfer any portion of his eligible accumulated contributions, not including any Roth after-tax contributions and the earnings thereon, to the Teachers' and State Employees' Retirement System and receive, in addition to his basic service, early or disability retirement allowance a special retirement allowance which shall be based on his eligible accumulated account balance at the date of the transfer of the assets.

...

(g) Exemption from Garnishment and Attachment. – Except as provided in subsection (g1) of this section, ~~The~~ the right of a participant in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment.

(g1) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental Retirement Income Plan for State Law-Enforcement Officers whose benefits are forfeited under G.S. 135-18.10A shall also forfeit contributions paid on or after December 1, 2012, on behalf

of the participant by the State to the Supplemental Retirement Income Plan. Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan.

(h) Notwithstanding any other provisions of law, any pending or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of their transfer to the State Retirement System on January 1, 1985, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, shall in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Teachers' and State Employees' Retirement System."

SECTION 14. G.S.143-166.50 reads as rewritten:

"§ 143-166.50. Retirement benefits for local governmental law-enforcement officers.

...
(e2) Forfeiture of Benefits for Certain Felonies. – Participants in the Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers whose benefits are forfeited under G.S. 128-38.4A shall also forfeit contributions paid on or after December 1, 2012, on behalf of the participant by local government employers of law enforcement officers to the Supplemental Retirement Income Plan for Local Governmental Law-Enforcement Officers. Any funds forfeited shall be deposited in the Supplemental Retirement Income Plan."

SECTION 15. G.S. 135-94 reads as rewritten:

"§ 135-94. Benefits.

(a) The Department of State Treasurer and the Board of Trustees shall establish a schedule of supplemental retirement income benefits for all members of the Supplemental Retirement Income Plan, subject to the following limitations:

- (1) Except as provided in G.S. 143-166.30(g1) and G.S. 143-166.50(e2), The the balance in each member's account shall be fully vested at all times and shall not be subject to forfeiture for any reason.
- (2) All amounts maintained in a member's account shall be invested according to the member's election, as approved by the Department of State Treasurer and Board of Trustees, including but not limited to, a time deposit account, a fixed investment account, or a variable investment account. Transfers of accumulated funds shall be permitted among the various approved forms of investment.
- (3) The Department of State Treasurer and Board of Trustees shall provide members with alternative payment options, including survivors' options, for the distribution of benefits from the Plan upon retirement, disability, termination, hardship, and death.
- (4) With the consent of the Department of State Treasurer and the Board of Trustees, amounts may be transferred from other qualified plans to the Supplemental Retirement Income Plan, provided that the trust from which such funds are transferred permits the transfer to be made and, the transfer will not jeopardize the tax status of the Supplemental Retirement Income Plan.
- (5) At the discretion of the Department of State Treasurer and Board of Trustees, a loan program may be implemented for members which complies with applicable State and federal laws and regulations.

(b) All provisions of the Plan shall be interpreted and applied by the Department of State Treasurer and Board of Trustees in a uniform and nondiscriminatory manner.

(c) All benefits under the Plan shall become payable on and after January 1, 1985.

(d) Contributions under the Plan may be made on and after January 1, 1985."

SECTION 16. G.S. 135-95 reads as rewritten:

"§ 135-95. Exemption from garnishment, attachment.

Except for the applications of the provisions of G.S. 143-166.30(g1), G.S. 143-166.50(e2), G.S. 110-136, and G.S. 110-136.3 et seq., and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income

Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and garnishment."

SECTION 17. The State Treasurer shall negotiate a memorandum of agreement with the United States Attorneys for the Eastern, Middle, and Western Districts of North Carolina whereby the prosecutors will notify the State Treasurer of convictions under G.S. 135-18.10A(b), 128-38.4A(b), 135-75.1A(b), 120-4.33A(b), 135-5(h), and 135-5.4(h).

SECTION 18. This act becomes effective December 1, 2012, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2012.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:16 p.m. this 17th day of July, 2012