

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

1

SENATE BILL 398

Short Title: Felony Forfeiture Changes/Retirement. (Public)

Sponsors: Senators Johnson and Wells (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 28, 2019

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE RECEIPT OF BENEFITS FROM THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM FOR JUDGES WHO HAVE BEEN IMPEACHED AND CONVICTED OR REMOVED FROM OFFICE, TO APPLY FELONY FORFEITURE PROVISIONS TO THE NATIONAL GUARD PENSION FUND AND TO THE DISABILITY INCOME PLAN OF NORTH CAROLINA, TO MAKE OTHER AMENDMENTS TO THE FELONY FORFEITURE STATUTES, AND TO PROVIDE FOR COMPLIANCE AND FRAUD REVIEWS OF PROGRAMS WITH THE DEPARTMENT OF STATE TREASURER AND ITS EXTERNAL CONTRACTS.

The General Assembly of North Carolina enacts:

PART I. FELONY FORFEITURE CLARIFICATION

SECTION 1.(a) G.S. 135-18.10A(b) is repealed.

SECTION 1.(b) G.S. 128-38.4A(b) is repealed.

SECTION 1.(c) G.S. 135-75.1A(b) is repealed.

SECTION 1.(d) G.S. 120-4.33A(b) is repealed.

SECTION 1.(e) Article 3 of Chapter 127A of the General Statutes is amended by adding a new section to read:

"§ 127A-40.1 Forfeiture of benefits for certain felonies.

A member of the North Carolina National Guard who is otherwise eligible to receive a monthly pension under this Article shall cease to be eligible upon forfeiture of any retirement benefits under G.S. 120-4.33, 120-4.33A, 128-38.4, 128-38.4A, 135-18.10, 135-18.10A, 135-75.1, 135-75.1A, or 135-75.1C. Monthly pensions payable under this Article shall cease upon the ineligibility of a member under this section."

SECTION 1.(f) G.S. 135-103 is amended by adding a new subsection to read:

"(c) A participant or beneficiary who is otherwise eligible to receive a benefit under this Article shall cease to be eligible upon forfeiture of any retirement benefits under G.S. 120-4.33, 120-4.33A, 128-38.4, 128-38.4A, 135-18.10, 135-18.10A, 135-75.1, 135-75.1A, or 135-75.1C."

SECTION 1.(g) Article 6 of Chapter 135 of the General Statutes is amended by adding a new section to read:

"§ 135-115. Benefit cessation for certain felonies.

Monthly benefits payable under this Article shall cease upon the ineligibility of a participant or beneficiary under G.S. 135-103(c)."

SECTION 1.(h) Subsections (e), (f), and (g) of this section are effective when it becomes law and apply to any applicable retirement benefits forfeiture occurring on or after that date.



1
2 **PART II. LIMIT PAYOUTS TO MEMBER CONTRIBUTIONS IF UNDER FELONY**
3 **INDICTMENT**

4 **SECTION 2.(a)** G.S. 135-18.10 is amended by adding a new subsection to read:

5 "(e) On and after October 1, 2019, upon notification or discovery of the indictment of a
6 member for any felony offense that, resulting in conviction, would require forfeiture of benefits
7 under this section, the Board of Trustees shall suspend the payment of monthly retirement
8 benefits or allowances to the member at the point in time when the monthly retirement benefits
9 or allowances paid to the member equal the amount of the member contributions plus interest. If
10 the member is not convicted of a felony offense requiring forfeiture of benefits under this section,
11 then the Board of Trustees shall restore the monthly retirement benefits or allowances to the
12 member and shall pay a lump sum to the member equal to the amount of the monthly retirement
13 benefits or allowances that would have been paid from the Retirement System if not for the
14 suspension, plus interest."

15 **SECTION 2.(b)** G.S. 135-18.10A is amended by adding a new subsection to read:

16 "(d) On and after October 1, 2019, upon notification or discovery of the indictment of a
17 member for any felony offense that, resulting in conviction, would require forfeiture of benefits
18 under this section, the Board of Trustees shall suspend the payment of monthly retirement
19 benefits or allowances to the member at the point in time when the monthly retirement benefits
20 or allowances paid to the member equal the amount of the member contributions plus interest. If
21 the member is not convicted of a felony offense requiring forfeiture of benefits under this section,
22 then the Board of Trustees shall restore the monthly retirement benefits or allowances to the
23 member and shall pay a lump sum to the member equal to the amount of the monthly retirement
24 benefits or allowances that would have been paid from the Retirement System if not for the
25 suspension, plus interest."

26 **SECTION 2.(c)** G.S. 128-38.4 is amended by adding a new subsection to read:

27 "(e) On and after October 1, 2019, upon notification or discovery of the indictment of a
28 member for any felony offense that, resulting in conviction, would require forfeiture of benefits
29 under this section, the Board of Trustees shall suspend the payment of monthly retirement
30 benefits or allowances to the member at the point in time when the monthly retirement benefits
31 or allowances paid to the member equal the amount of the member contributions plus interest. If
32 the member is not convicted of a felony offense requiring forfeiture of benefits under this section,
33 then the Board of Trustees shall restore the monthly retirement benefits or allowances to the
34 member and shall pay a lump sum to the member equal to the amount of the monthly retirement
35 benefits or allowances that would have been paid from the Retirement System if not for the
36 suspension, plus interest."

37 **SECTION 2.(d)** G.S. 128-38.4A is amended by adding a new subsection to read:

38 "(d) On and after October 1, 2019, upon notification or discovery of the indictment of a
39 member for any felony offense that, resulting in conviction, would require forfeiture of benefits
40 under this section, the Board of Trustees shall suspend the payment of monthly retirement
41 benefits or allowances to the member at the point in time when the monthly retirement benefits
42 or allowances paid to the member equal the amount of the member contributions plus interest. If
43 the member is not convicted of a felony offense requiring forfeiture of benefits under this section,
44 then the Board of Trustees shall restore the monthly retirement benefits or allowances to the
45 member and shall pay a lump sum to the member equal to the amount of the monthly retirement
46 benefits or allowances that would have been paid from the Retirement System if not for the
47 suspension, plus interest."

48 **SECTION 2.(e)** G.S. 135-75.1 is amended by adding a new subsection to read:

49 "(e) On and after October 1, 2019, upon notification or discovery of the indictment of a
50 member for any felony offense that, if convicted, would require forfeiture of benefits under this
51 section, the Board of Trustees shall suspend the payment of monthly retirement benefits or

1 allowances to the member at the point in time when the monthly retirement benefits or allowances
2 paid to the member equal the amount of the member contributions plus interest. If the member is
3 not convicted of a felony offense requiring forfeiture of benefits under this section, then the Board
4 of Trustees shall restore the monthly retirement benefits or allowances to the member and shall
5 pay a lump sum to the member equal to the amount of the monthly retirement benefits or
6 allowances that would have been payment from the Retirement System if not for the suspension,
7 plus interest."

8 **SECTION 2.(f)** G.S. 135-75.1A is amended by adding a new subsection to read:

9 "(d) On and after October 1, 2019, upon notification or discovery of the indictment of a
10 member for any felony offense that, if convicted, would require forfeiture of benefits under this
11 section, the Board of Trustees shall suspend the payment of monthly retirement benefits or
12 allowances to the member at the point in time when the monthly retirement benefits or allowances
13 paid to the member equal the amount of the member contributions plus interest. If the member is
14 not convicted of a felony offense requiring forfeiture of benefits under this section, then the Board
15 of Trustees shall restore the monthly retirement benefits or allowances to the member and shall
16 pay a lump sum to the member equal to the amount of the monthly retirement benefits or
17 allowances that would have been payment from the Retirement System if not for the suspension,
18 plus interest."

19 **SECTION 2.(g)** G.S. 120-4.33 is amended by adding a new subsection to read:

20 "(e) On and after October 1, 2019, upon notification or discovery of the indictment of a
21 member for any felony offense that, if convicted, would require forfeiture of benefits under this
22 section, the Board of Trustees shall suspend the payment of monthly retirement benefits or
23 allowances to the member at the point in time when the monthly retirement benefits or allowances
24 paid to the member equal the amount of the member contributions plus interest. If the member is
25 not convicted of a felony offense requiring forfeiture of benefits under this section, then the Board
26 of Trustees shall restore the monthly retirement benefits or allowances to the member and shall
27 pay a lump sum to the member equal to the amount of the monthly retirement benefits or
28 allowances that would have been payment from the Retirement System if not for the suspension,
29 plus interest."

30 **SECTION 2.(h)** G.S. 120-4.33A is amended by adding a new subsection to read:

31 "(d) On and after October 1, 2019, upon notification or discovery of the indictment of a
32 member for any felony offense that, if convicted, would require forfeiture of benefits under this
33 section, the Board of Trustees shall suspend the payment of monthly retirement benefits or
34 allowances to the member at the point in time when the monthly retirement benefits or allowances
35 paid to the member equal the amount of the member contributions plus interest. If the member is
36 not convicted of a felony offense requiring forfeiture of benefits under this section, then the Board
37 of Trustees shall restore the monthly retirement benefits or allowances to the member and shall
38 pay a lump sum to the member equal to the amount of the monthly retirement benefits or
39 allowances that would have been payment from the Retirement System if not for the suspension,
40 plus interest."

41 **PART III. FORFEITURE OF RETIREMENT BENEFITS/JUDGES**

42 **SECTION 3.(a)** Article 4 of Chapter 135 of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 135-75.1C. Forfeiture of retirement benefits for conviction on impeachment or removal**
45 **from office.**

46 (a) The Board of Trustees shall not pay any retirement benefits or allowances, except for
47 a return of member contributions plus interest, to any justice or judge of the General Court of
48 Justice for whom any of the following apply:
49

1 (1) The justice or judge of the General Court of Justice is convicted on
2 impeachment under Article IV of the North Carolina Constitution and Chapter
3 123 of the General Statutes.

4 (2) The justice or judge of the General Court of Justice is removed from office
5 under G.S. 7A-376(b) for reasons other than physical or mental incapacity.

6 (b) If a justice or judge of the General Court of Justice or former justice or judge of the
7 General Court of Justice whose benefits were forfeited under this section, except for the return
8 of member contributions plus interest, has vested in this System on or before January 1, 2020,
9 then that member is not entitled to any creditable service that accrued after January 1, 2020.

10 (c) If a justice or judge of the General Court of Justice or former justice or judge of the
11 General Court of Justice whose benefits were forfeited under this section, except for the return
12 of member contributions plus interest, subsequently has the conviction on impeachment or
13 removal from office under G.S. 7A-376(b) vacated or set aside for any reason, then the member
14 or former member may seek a reversal of the benefit forfeiture by presenting sufficient evidence
15 to the State Treasurer. If the State Treasurer determines a reversal of the benefit forfeiture is
16 appropriate, then all benefits will be restored upon repayment of all accumulated contributions
17 plus interest. Repayment of all accumulated contributions that have been received by the
18 individual under the forfeiture provisions of this section must be made in a total lump-sum
19 payment with interest compounded annually at a rate of six and one-half percent (6.5%) for each
20 calendar year from the year of forfeiture to the year of repayment. An individual receiving a
21 reversal of benefit forfeiture must receive reinstatement of the service credit forfeited."

22 **SECTION 3.(b)** G.S. 135-75.1B reads as rewritten:

23 "**§ 135-75.1B. Prohibition on purchase of forfeited service.**

24 Any member whose retirement benefits have been forfeited under ~~G.S. 135-75.1~~ or
25 ~~G.S. 135-75.1A~~ this Article is prohibited from subsequently purchasing or repurchasing either
26 those forfeited benefits or any creditable membership service associated with those forfeited
27 benefits."

28 **SECTION 3.(c)** G.S. 7A-376(b) reads as rewritten:

29 "(b) Upon recommendation of the Commission, the Supreme Court may issue a public
30 reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and
31 persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime
32 involving moral turpitude, or conduct prejudicial to the administration of justice that brings the
33 judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall
34 receive no compensation during the period of that suspension. A judge who is removed for any
35 of the foregoing reasons shall receive no retirement ~~compensation~~ compensation, except for a
36 return of member contributions plus interest as provided in G.S. 135-75.1C, and is disqualified
37 from holding further judicial office."

38 **SECTION 3.(d)** The General Assembly and the Supreme Court shall notify the State
39 Treasurer and the Board of Trustees of the conviction on impeachment or removal from office
40 of a justice or judge of the General Court of Justice.

41 **SECTION 3.(e)** This section becomes effective January 1, 2020, and applies to
42 offenses committed on or after that date.

43 44 **PART IV. DST COMPLIANCE AND FRAUD REVIEWS**

45 **SECTION 4.** Article 6 of Chapter 147 of the General Statutes is amended by adding
46 a new section to read:

47 "**§ 147-86.3. Fraud and compliance investigations.**

48 (a) The following definitions apply in this section:

49 (1) Compliance investigation. – An independent review or examination by the
50 Department of State Treasurer staff, or authorized representatives who are
51 assisting the Department's staff, of records, activities, actions, or decisions by

1 entities having an impact on the Department or benefits administered by the
2 State Treasurer. The purpose of a compliance investigation is to help detect
3 errors and ensure compliance and full accountability in the use of State funds.

4 (2) Fraud investigation. – An independent review or examination by Department
5 of State Treasurer staff, or authorized representatives who are assisting the
6 Department's staff, of records, activities, actions, or decisions by entities
7 having an impact on the Department. The purpose of a fraud investigation is
8 to help detect and prevent fraud and to ensure full accountability in the use of
9 State funds.

10 (b) Access to Persons and Records. – In the course of conducting a compliance
11 investigation or a fraud investigation, the Department of State Treasurer, or authorized
12 representatives who are assisting the Department of State Treasurer staff, shall have all of the
13 following:

14 (1) Ready access to persons and may examine and copy all books, records,
15 reports, vouchers, correspondence, files, personnel files, investments, and any
16 other documentation of any employer or provider of services to the
17 Department of State Treasurer. The review of State tax returns shall be limited
18 to matters of official business, and the Department of State Treasurer's report
19 shall not violate the confidentiality provisions of tax laws.

20 (2) Access to persons, records, papers, reports, vouchers, correspondence, books,
21 and any other documentation that is in the possession of any individual,
22 private corporation, institution, association, board, or other organization that
23 pertain to all of the following:

24 a. Amounts received pursuant to a grant or contract from the federal
25 government, the State, or its political subdivisions.

26 b. Amounts received, disbursed, or otherwise handled on behalf of the
27 federal government or the State.

28 (3) The authority, and shall be provided with ready access, to examine and inspect
29 all property, equipment, and facilities in the possession of any employer
30 agency or any individual, private corporation, institution, association, board,
31 or other organization that were furnished or otherwise provided through grant,
32 contract, or any other type of funding by the employer agency.

33 With respect to the requirements of sub-subdivision (2)b. of this subsection, providers of
34 social and medical services to a beneficiary of a program administered by the Department of
35 State Treasurer shall make copies of records they maintain for services provided to a beneficiary
36 available to the Department of State Treasurer, or to the authorized representatives who are
37 assisting the Department of State Treasurer staff. Copies of the records of social and medical
38 services provided to a beneficiary of a program administered by the Department of State
39 Treasurer will permit verification of the health or other status of a beneficiary as required for the
40 payment of benefits under Article 2 of Chapter 128 of the General Statutes, or under Article 1,
41 Article 3B, Article 4, or Article 6 of Chapter 135 of the General Statutes. The Department of
42 State Treasurer, or authorized representatives who are assisting the Department of State Treasurer
43 staff, shall request records in writing by providing the name of each beneficiary of a program
44 administered by the Department of State Treasurer for whom records are sought, the purpose of
45 the request, the statutory authority for the request, and a reasonable period of time for the
46 production of record copies by the provider. A provider may charge, and the Department of State
47 Treasurer, or authorized representatives who are assisting the Department of State Treasurer
48 staff, shall, in accordance with G.S. 90-411, pay a reasonable fee to the provider for copies of the
49 records provided in accordance with this subsection.

50 (c) Compliance or Fraud Investigative Reports and Work Papers. – The State Treasurer
51 shall maintain for 10 years a complete file of all compliance investigative reports, fraud

1 investigative reports and reports of other examinations, investigations, surveys, and reviews
2 issued under the State Treasurer's authority. Fraud or compliance investigation work papers and
3 other evidence or related supportive material directly pertaining to the work of the Department
4 of State Treasurer shall be retained according to an agreement between the State Treasurer and
5 State Archives. To promote intergovernmental cooperation and avoid unnecessary duplication of
6 fraud and compliance investigative efforts, and notwithstanding any personnel policies to the
7 contrary, pertinent work papers and other supportive material relating to issued fraud or
8 compliance investigation reports may be, at the discretion of the State Treasurer and unless
9 otherwise prohibited by law, made available for inspection by duly authorized representatives of
10 the State and federal government who desire access to and inspection of such records in
11 connection with some matter officially before them, including criminal investigations. Except as
12 provided in this section, or upon an order issued in Wake County Superior Court upon 10 days'
13 notice and hearing finding that access is necessary to a proper administration of justice, fraud and
14 compliance investigation work papers and related supportive material shall be kept confidential,
15 including any information developed as a part of the investigation.

16 (d) Fraud Reports Shall Be Anonymous. – The identity of any person reporting fraud,
17 waste, and abuse to the Department of State Treasurer shall be kept confidential and shall not be
18 maintained as a public record within the meaning of G.S. 132-1.

19
20 **PART V. EFFECTIVE DATE**

21 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
22 law.