

HOUSE BILL 9

P6
HB 790/23 – APP

(PRE-FILED)

4lr0455

By: **Delegate Crosby**

Requested: August 4, 2023

Introduced and read first time: January 10, 2024

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Retirement and Pension System – Forfeiture of Benefits**

3 FOR the purpose of establishing that a public employee is subject to forfeiture of benefits
4 from the State Retirement and Pension System when the public employee is found
5 guilty of, pleads guilty to, or enters a plea of nolo contendere to a qualifying crime;
6 providing for the processes and procedures to implement a forfeiture of benefits;
7 providing for the processes and procedures to reverse a forfeiture of benefits; and
8 generally relating to the forfeiture of pension benefits.

9 BY repealing and reenacting, with amendments,
10 Article – State Personnel and Pensions
11 Section 21–502(a)(3)
12 Annotated Code of Maryland
13 (2015 Replacement Volume and 2023 Supplement)

14 BY adding to
15 Article – State Personnel and Pensions
16 Section 21–801 through 21–809 to be under the new subtitle “Subtitle 8. Forfeiture
17 of Benefits”
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2023 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – State Personnel and Pensions**

23 21–502.

24 (a) (3) A court of competent jurisdiction may expressly order that a benefit

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



under this Division II be assigned to a spouse, former spouse, child, or other dependent when [an order of benefit forfeiture is issued] **A FORFEITURE OF BENEFITS OCCURS** in accordance with § 21-704 **OR § 21-804** of this title.

SUBTITLE 8. FORFEITURE OF BENEFITS.

21-801.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “DOMESTIC RELATIONS ORDER” MEANS AN ORDER ISSUED IN ACCORDANCE WITH § 21-502(A)(2) OF THIS TITLE, § 414(P) OF THE INTERNAL REVENUE CODE, AND REGULATIONS ADOPTED BY THE BOARD OF TRUSTEES THAT ASSIGNS A BENEFIT TO A SPOUSE, A FORMER SPOUSE, A CHILD, OR ANY OTHER DEPENDENT OF A PUBLIC EMPLOYEE IN CONNECTION WITH A DECREE OR ORDER OF ALIMONY, CHILD SUPPORT, OR DIVORCE.

(C) “FINAL ADJUDICATION” MEANS ADJUDICATION BY A TRIAL COURT RESULTING IN FINAL DISPOSITION OF ALL CHARGES THAT CONSTITUTE A QUALIFYING CRIME.

(D) “PUBLIC EMPLOYEE” MEANS AN INDIVIDUAL WHO:

(1) IS LISTED IN § 21-802 OF THIS SUBTITLE; AND

(2) HAS BEEN CHARGED WITH A QUALIFYING CRIME.

(E) “QUALIFYING CRIME” MEANS A CRIMINAL OFFENSE UNDER § 3-303, § 3-304, § 3-309, OR § 3-310 OF THE CRIMINAL LAW ARTICLE THAT IS COMMITTED IN THE COURSE OF THE PERFORMANCE OF THE PUBLIC EMPLOYEE’S DUTIES AND RESPONSIBILITIES.

(F) “RETIREMENT ALLOWANCE”:

(1) HAS THE MEANING STATED IN § 20-101 OF THIS ARTICLE; AND

(2) INCLUDES A VESTED ALLOWANCE.

(G) “VESTED ALLOWANCE” HAS THE MEANING STATED IN § 20-101 OF THIS ARTICLE.

21-802.

(A) THIS SUBTITLE APPLIES TO AN INDIVIDUAL WHO IS A MEMBER, FORMER MEMBER, OR RETIREE OF:

(1) THE STATE POLICE RETIREMENT SYSTEM;

(2) THE LAW ENFORCEMENT OFFICERS' PENSION SYSTEM;

(3) THE EMPLOYEES' PENSION SYSTEM OR THE EMPLOYEES' RETIREMENT SYSTEM;

(4) THE TEACHERS' PENSION SYSTEM OR THE TEACHERS' RETIREMENT SYSTEM;

(5) THE CORRECTIONAL OFFICERS' RETIREMENT SYSTEM; OR

(6) THE JUDGES' RETIREMENT SYSTEM.

(B) THIS SUBTITLE DOES NOT APPLY TO ANY SERVICE EARNED BEFORE JULY 1, 2024.

21-803.

(A) BENEFITS UNDER THIS DIVISION II OF THIS ARTICLE PAYABLE TO A PUBLIC EMPLOYEE ARE SUBJECT TO FORFEITURE IN ACCORDANCE WITH THIS SUBTITLE IF THE PUBLIC EMPLOYEE IS FOUND GUILTY OF, PLEADS GUILTY TO, OR ENTERS A PLEA OF NOLO CONTENDERE TO A QUALIFYING CRIME.

(B) (1) BENEFITS UNDER THIS DIVISION II MAY NOT BE FORFEITED OR REDUCED IF THE INTERNAL REVENUE SERVICE DETERMINES THAT THE FORFEITURE OR REDUCTION WILL NEGATIVELY AFFECT OR INVALIDATE THE TAX QUALIFIED STATUS OF ANY OF THE SEVERAL SYSTEMS.

(2) IF THE INTERNAL REVENUE SERVICE DETERMINES THAT THE APPLICATION OF THIS SUBTITLE WOULD NEGATIVELY AFFECT OR INVALIDATE THE TAX QUALIFIED STATUS OF ANY OF THE SEVERAL SYSTEMS, ANY FORFEITURE OF BENEFITS THAT TOOK PLACE BEFORE THE INTERNAL REVENUE SERVICE'S DETERMINATION SHALL BE REVERSED IN ACCORDANCE WITH § 21-807 OF THIS SUBTITLE TO THE EXTENT NECESSARY TO COMPLY WITH THE DETERMINATION.

21-804.

(A) IF THE FINAL ADJUDICATION OF CHARGES RESULTS IN CONVICTION OF

1 A PUBLIC EMPLOYEE, THE PUBLIC EMPLOYEE'S RETIREMENT ALLOWANCE SHALL BE
2 FORFEITED IN ACCORDANCE WITH THIS SECTION.

3 (B) (1) EXCEPT AS PROVIDED UNDER SUBSECTIONS (C), (D), AND (E) OF
4 THIS SECTION, BENEFITS MAY NOT BE PAID TO A PUBLIC EMPLOYEE IF THE BOARD
5 OF TRUSTEES FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:

6 (I) THE PUBLIC EMPLOYEE WAS CONVICTED OF A QUALIFYING
7 CRIME;

8 (II) THE PUBLIC EMPLOYEE WAS A MEMBER OF THE STATE
9 POLICE RETIREMENT SYSTEM, THE LAW ENFORCEMENT OFFICERS' PENSION
10 SYSTEM, THE EMPLOYEES' PENSION SYSTEM, THE EMPLOYEES' RETIREMENT
11 SYSTEM, THE TEACHERS' PENSION SYSTEM, THE TEACHERS' RETIREMENT
12 SYSTEM, THE CORRECTIONAL OFFICERS' RETIREMENT SYSTEM, OR THE JUDGES'
13 RETIREMENT SYSTEM; AND

14 (III) THE QUALIFYING CRIME FOR WHICH THE PUBLIC
15 EMPLOYEE WAS CONVICTED WAS COMMITTED WHILE THE PUBLIC EMPLOYEE WAS
16 AN ACTIVE MEMBER OF THE STATE POLICE RETIREMENT SYSTEM, THE LAW
17 ENFORCEMENT OFFICERS' PENSION SYSTEM, THE EMPLOYEES' PENSION SYSTEM,
18 THE EMPLOYEES' RETIREMENT SYSTEM, THE TEACHERS' PENSION SYSTEM, THE
19 TEACHERS' RETIREMENT SYSTEM, THE CORRECTIONAL OFFICERS' RETIREMENT
20 SYSTEM, OR THE JUDGES' RETIREMENT SYSTEM.

21 (2) ONLY SERVICE CREDIT IN THE STATE SYSTEM IN WHICH THE
22 PUBLIC EMPLOYEE IS A MEMBER WHEN THE QUALIFYING CRIME IS COMMITTED IS
23 ELIGIBLE FOR FORFEITURE UNDER THIS SECTION.

24 (C) (1) A PUBLIC EMPLOYEE CONVICTED OF A QUALIFYING CRIME MAY,
25 WITHIN 1 YEAR AFTER THE CONVICTION, FILE A CLAIM IN CIRCUIT COURT FOR A
26 PARTIAL PAYMENT OF THE PUBLIC EMPLOYEE'S RETIREMENT ALLOWANCE.

27 (2) NOTICE OF THE CLAIM FILED UNDER PARAGRAPH (1) OF THIS
28 SUBSECTION SHALL BE SERVED ON THE STATE RETIREMENT AGENCY.

29 (3) WHEN CONSIDERING A CLAIM OF A PUBLIC EMPLOYEE UNDER
30 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL CONSIDER:

31 (I) THE SEVERITY OF THE CRIME;

32 (II) THE AMOUNT OF MONETARY LOSS SUFFERED BY THE
33 STATE, A COUNTY, A POLITICAL SUBDIVISION, OR A PERSON AS A RESULT OF THE
34 CRIME;

1 (III) THE DEGREE OF PUBLIC TRUST PLACED IN THE PUBLIC
2 EMPLOYEE;

3 (IV) THE FINANCIAL NEEDS AND RESOURCES OF THE PUBLIC
4 EMPLOYEE;

5 (V) THE FINANCIAL NEEDS AND RESOURCES OF THE PUBLIC
6 EMPLOYEE'S SPOUSE, CHILDREN, OR OTHER DEPENDENTS;

7 (VI) ANY INTEREST IN BENEFITS OF A FORMER SPOUSE
8 ESTABLISHED UNDER AN EXISTING DOMESTIC RELATIONS ORDER; AND

9 (VII) ANY OTHER FACTORS THE COURT DETERMINES RELEVANT.

10 (D) (1) A SPOUSE, A FORMER SPOUSE, A CHILD, OR ANY OTHER
11 DEPENDENT OF A PUBLIC EMPLOYEE CONVICTED OF A QUALIFYING CRIME MAY,
12 WITHIN 1 YEAR AFTER THE CONVICTION, FILE A CLAIM IN CIRCUIT COURT FOR A
13 PARTIAL PAYMENT OF THE PUBLIC EMPLOYEE'S RETIREMENT ALLOWANCE FOR
14 PURPOSES OF CHILD SUPPORT, ALIMONY, OR MARITAL PROPERTY RIGHTS.

15 (2) NOTICE OF THE CLAIM FILED UNDER PARAGRAPH (1) OF THIS
16 SUBSECTION SHALL BE SERVED ON THE STATE RETIREMENT AGENCY.

17 (3) THE COURT MAY ENTER A DOMESTIC RELATIONS ORDER THAT
18 PROVIDES THAT SOME OR ALL OF THE FORFEITED BENEFITS BE PAID TO A SPOUSE,
19 A FORMER SPOUSE, A CHILD, OR ANY OTHER DEPENDENT FOR PURPOSES OF CHILD
20 SUPPORT, ALIMONY, OR MARITAL PROPERTY RIGHTS.

21 (4) WHEN DETERMINING WHETHER TO ENTER A DOMESTIC
22 RELATIONS ORDER UNDER THIS SUBSECTION, THE COURT SHALL CONSIDER
23 WHETHER THE PUBLIC EMPLOYEE'S SPOUSE, FORMER SPOUSE, CHILDREN, OR
24 OTHER DEPENDENTS WERE CULPABLE OR COMPLICIT IN THE COMMISSION OF THE
25 QUALIFYING CRIME.

26 (5) THE COURT MAY NOT ORDER BENEFITS TO BE PAID TO A PUBLIC
27 EMPLOYEE'S SPOUSE, FORMER SPOUSE, CHILD, OR OTHER DEPENDENT IN A
28 MANNER THAT IS INCONSISTENT WITH THE PAYMENT OF BENEFITS IN THE STATE
29 SYSTEM IN WHICH THE PUBLIC EMPLOYEE WAS A MEMBER.

30 (E) (1) A FORFEITURE OF BENEFITS UNDER THIS SECTION MAY NOT
31 IMPAIR OR ALTER AN EXISTING DOMESTIC RELATIONS ORDER PROVIDING BENEFITS
32 TO A FORMER SPOUSE OF A PUBLIC EMPLOYEE.

(2) A PUBLIC EMPLOYEE'S INTEREST IN A BENEFIT OF A FORMER SPOUSE ESTABLISHED BY A DOMESTIC RELATIONS ORDER MAY NOT BE SUBJECT TO A FORFEITURE OR REDUCTION UNDER THIS SUBTITLE.

(F) BENEFITS AVAILABLE TO A PUBLIC EMPLOYEE AS A BENEFICIARY MAY NOT BE SUBJECT TO A FORFEITURE UNDER THIS SUBTITLE.

21-805.

(A) IF A PUBLIC EMPLOYEE HAS RETIRED BEFORE BEING CONVICTED OF A QUALIFYING CRIME, THE BOARD OF TRUSTEES MAY RECOVER FROM THE PUBLIC EMPLOYEE THE AMOUNT OF BENEFITS PAID TO THE PUBLIC EMPLOYEE BEFORE THE CONVICTION.

(B) THE RECOVERY UNDER SUBSECTION (A) OF THIS SECTION IS LIMITED TO AN AMOUNT EQUAL TO THE BENEFITS THAT WOULD HAVE BEEN FORFEITED HAD THE CONVICTION OCCURRED BEFORE THE PUBLIC EMPLOYEE BEGAN RECEIVING ANY BENEFITS AS A RETIREE.

21-806.

(A) THIS SECTION APPLIES TO A PUBLIC EMPLOYEE WHO IS NOT A RETIREE.

(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, A PUBLIC EMPLOYEE MAY SUBMIT AN APPLICATION FOR RETIREMENT.

(C) IF A PUBLIC EMPLOYEE IS ELIGIBLE TO APPLY FOR A RETIREMENT ALLOWANCE, A PUBLIC EMPLOYEE'S APPLICATION FOR RETIREMENT BENEFITS:

(1) SHALL BE CONSIDERED SUBMITTED ON THE FIRST DAY OF THE MONTH AFTER IT IS PROPERLY COMPLETED AND SUBMITTED TO THE STATE RETIREMENT AGENCY; AND

(2) MAY NOT BE PROCESSED BY THE STATE RETIREMENT AGENCY UNLESS AND UNTIL THE FINAL ADJUDICATION OF THE CHARGE DOES NOT RESULT IN CONVICTION.

21-807.

(A) (1) ON RECEIPT OF AN ORDER THAT REVERSES OR OVERTURNS A CONVICTION OF A PUBLIC EMPLOYEE, THE BOARD OF TRUSTEES SHALL RESCIND THE FORFEITURE OF BENEFITS AND PAY ANY BENEFITS THAT ARE PAYABLE UNDER THIS DIVISION II OF THIS ARTICLE TO THE PUBLIC EMPLOYEE.

1 **(2) WHEN A CONVICTION IS OVERTURNED, ANY DOMESTIC**
2 **RELATIONS ORDER ENTERED IN ACCORDANCE WITH § 21-804(D) OF THIS SUBTITLE**
3 **IS TERMINATED AND THE BOARD OF TRUSTEES MAY NOT PAY ANY BENEFITS IN**
4 **ACCORDANCE WITH THE ORDER.**

5 **(B) IF A CONVICTION OF A PUBLIC EMPLOYEE WHO WAS A RETIREE BEFORE**
6 **THE DATE OF CONVICTION IS OVERTURNED:**

7 **(1) THE PUBLIC EMPLOYEE'S BENEFITS SHALL BE RESTORED BACK**
8 **TO THE DATE THE BENEFIT PAYMENTS CEASED;**

9 **(2) THE ALLOWANCE SHALL:**

10 **(I) BE PAID BEGINNING THE MONTH AFTER THE STATE**
11 **RETIREMENT AGENCY IS NOTIFIED THAT THE CONVICTION IS OVERTURNED; AND**

12 **(II) INCLUDE ANY COST-OF-LIVING ADJUSTMENTS THAT**
13 **WOULD HAVE BEEN MADE IN THE TIME BETWEEN THE CONVICTION AND THE TIME**
14 **BENEFIT PAYMENTS ARE RESTORED; AND**

15 **(3) BENEFIT PAYMENTS THAT WOULD HAVE BEEN MADE DURING THE**
16 **TIME FROM THE DATE OF CONVICTION TO THE DATE THE CONVICTION IS**
17 **OVERTURNED SHALL BE MADE TO THE PUBLIC EMPLOYEE, LESS ANY PAYMENTS:**

18 **(I) MADE IN ACCORDANCE WITH A DOMESTIC RELATIONS**
19 **ORDER DIRECTING PAYMENT OF BENEFITS TO A SPOUSE, A FORMER SPOUSE, A**
20 **CHILD, OR ANY OTHER DEPENDENT; AND**

21 **(II) RECEIVED BY THE PUBLIC EMPLOYEE IN ACCORDANCE**
22 **WITH AN ORDER ISSUED UNDER § 21-804 GRANTING THE PUBLIC EMPLOYEE A**
23 **PARTIAL PAYMENT OF BENEFITS.**

24 **(C) IF A CONVICTION OF A PUBLIC EMPLOYEE WHO WAS NOT A RETIREE**
25 **BEFORE THE DATE OF CONVICTION IS OVERTURNED, THE PUBLIC EMPLOYEE MAY**
26 **RECEIVE BENEFITS IN ACCORDANCE WITH THIS DIVISION II OF THIS ARTICLE.**

27 **21-808.**

28 **(A) EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, A**
29 **PUBLIC EMPLOYEE SUBJECT TO A FORFEITURE UNDER THIS SUBTITLE IS ENTITLED**
30 **TO A RETURN OF THE INDIVIDUAL'S ACCUMULATED CONTRIBUTIONS ON REQUEST**
31 **UNDER § 29-501 OF THIS ARTICLE.**

32 **(B) THE PUBLIC EMPLOYEE'S ACCUMULATED CONTRIBUTIONS SHALL BE**

1 REDUCED BY AN AMOUNT EQUAL TO ANY BENEFIT PAYMENTS RECEIVED BY THE
2 PUBLIC EMPLOYEE THAT WOULD HAVE BEEN SUBJECT TO FORFEITURE AND HAVE
3 NOT BEEN RECOVERED BY THE BOARD OF TRUSTEES UNDER § 21-805 OF THIS
4 SUBTITLE.

5 **21-809.**

6 **THE BOARD OF TRUSTEES SHALL ADOPT REGULATIONS TO IMPLEMENT THIS**
7 **SUBTITLE.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
9 apply only prospectively and may not be applied or interpreted to have any effect on or
10 application to any crime committed before the effective date of this Act.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
12 1, 2024.