

## Chapter 220

## (Senate Bill 542)

AN ACT concerning

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

FOR the purpose of authorizing a certain assignment of benefits; establishing that certain public employees who are certain State officers may be subject to forfeiture of benefits from the State Retirement and Pension System; prohibiting the payment of certain benefits to a public employee who is found guilty of, pleads guilty to, or enters a plea of nolo contendere to a qualifying crime; prohibiting the forfeiture of benefits if the forfeiture negatively affects or invalidates the tax qualified status of ~~a plan~~ any of the several systems within the State Retirement and Pension System; requiring that certain forfeitures of benefits be reversed under certain circumstances; requiring the forfeiture of benefits, in whole or in part, for a public employee who is convicted of a qualifying crime; requiring the Attorney General or State's Attorney to file a certain complaint in circuit court; requiring notice of the complaint to be sent to certain persons; requiring the State Retirement Agency to provide certain information to the Attorney General or State's Attorney under certain circumstances; establishing certain findings that shall be made when entering an order requiring the forfeiture of benefits; requiring the forfeiture order to indicate the amount of benefits forfeit; requiring a court to consider certain factors when determining the amount of benefits subject to forfeiture; clarifying that only certain service is subject to forfeiture; authorizing a court to ~~order~~ enter a domestic relations order that provides that some or all of the forfeited benefits ~~to~~ be paid to certain individuals subject to certain limitations; prohibiting a forfeiture order from impairing or altering ~~a domestic relations order~~ certain domestic relations orders; clarifying that a public employee may receive benefits as a beneficiary; clarifying that a public employee's interest in benefits of a former spouse is not subject to forfeiture; authorizing the Board of Trustees for the State Retirement and Pension System to recover certain payments made to a public employee subject to a forfeiture order; limiting the amount that may be recovered; authorizing certain public employees to submit an application for retirement; prohibiting the State Retirement Agency from processing a certain application for retirement until certain conditions are met; requiring a forfeiture order to be rescinded under certain circumstances; requiring certain payments to be made when a conviction is overturned; providing that a public employee subject to a forfeiture order is entitled to a return of employee contributions on request; authorizing certain employee contributions to be reduced under certain circumstances; requiring the Board of Trustees to adopt certain regulations; providing for the application of this Act; defining certain terms; providing for a delayed effective date; and generally relating to the forfeiture of certain retirement benefits by certain constitutional officers with a criminal conviction.

BY repealing and reenacting, with amendments,

Article – State Personnel and Pensions  
 Section 21–502  
 Annotated Code of Maryland  
 (2015 Replacement Volume)

BY adding to

Article – State Personnel and Pensions  
 Section 21–701 through 21–709 to be under the new subtitle “Subtitle 7. Forfeiture  
 of Benefits”  
 Annotated Code of Maryland  
 (2015 Replacement Volume)

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

**Article – State Personnel and Pensions**

21–502.

(a) (1) Except as provided in paragraph (2) of this subsection, a person may not attach, execute, garnish, or otherwise seize any current or future benefit under this Division II or any money in a fund created under this Division II.

(2) ~~A~~ **IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD OF TRUSTEES,** A court of competent jurisdiction may expressly order that a benefit under this Division II be assigned in a decree or order of alimony, child support, or divorce, or in a court–approved property settlement incident to a court decree or order.

**(3) A COURT OF COMPETENT JURISDICTION MAY EXPRESSLY ORDER THAT A BENEFIT UNDER THIS DIVISION II BE ASSIGNED TO A SPOUSE, ~~DEPENDENT,~~ ~~OR DESIGNATED BENEFICIARY~~ FORMER SPOUSE, CHILD, OR OTHER DEPENDENT WHEN AN ORDER OF BENEFIT FORFEITURE IS ISSUED IN ACCORDANCE WITH § 21–704 OF THIS TITLE.**

(b) An assignment under this section only applies to benefits paid after the Board of Trustees receives:

- (1) written notice of the court decree or order; and
- (2) any additional information that the Board of Trustees requires.

(c) The Board of Trustees is not liable for an improper payment to a person because the Board of Trustees did not receive written notice of a court decree or order.

**SUBTITLE 7. FORFEITURE OF BENEFITS.**

**21-701.**

(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 ~~ASSIGNING A BENEFIT IN, § 414(P) OF THE INTERNAL REVENUE CODE, AND REGULATIONS ADOPTED BY THE BOARD OF TRUSTEES THAT ASSIGNS A BENEFIT TO A SPOUSE, FORMER SPOUSE, CHILD, OR 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 EMPLOYED IN A POSITION LISTED IN § 21-702 OF THIS SUBTITLE; AND

(2) HAS BEEN CHARGED WITH A QUALIFYING CRIME.

(E) “QUALIFYING CRIME” MEANS A FELONY:

(1) THAT IS COMMITTED IN THE COURSE OF A PUBLIC EMPLOYEE’S DUTIES AND RESPONSIBILITIES;

(2) THAT IS COMMITTED THROUGH THE USE OF THE PUBLIC EMPLOYEE’S AUTHORITY DERIVED FROM THE POSITION OF EMPLOYMENT; AND

(3) THE COMMISSION OF WHICH RESULTS IN, OR IS ATTEMPTED TO RESULT IN, GAIN, PROFIT, OR ADVANTAGE FOR THE PUBLIC EMPLOYEE.

**21-702.**

(A) THIS SUBTITLE APPLIES TO AN INDIVIDUAL WHO:

(1) IS A MEMBER, FORMER MEMBER, OR RETIREE OF THE EMPLOYEES’ RETIREMENT SYSTEM OR THE EMPLOYEES’ PENSION SYSTEM; AND

(2) HAS EARNED CREDITABLE SERVICE WHILE EMPLOYED AS:

- (I) THE ATTORNEY GENERAL OF THE STATE;
- (II) THE COMPTROLLER OF THE STATE;
- (III) THE GOVERNOR OF THE STATE;
- (IV) THE LIEUTENANT GOVERNOR OF THE STATE;
- (V) THE SECRETARY OF STATE; OR
- (VI) THE TREASURER OF THE STATE.

(B) THIS SUBTITLE DOES NOT APPLY TO ANY SERVICE EARNED BEFORE ~~JULY 1, 2016~~ JANUARY 9, 2019.

21-703.

(A) BENEFITS UNDER THIS DIVISION II OF THIS ARTICLE PAYABLE TO A PUBLIC EMPLOYEE ARE SUBJECT TO FORFEITURE IN WHOLE OR IN PART 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 PLAN WITHIN THE STATE RETIREMENT AND PENSION SYSTEM 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 § 21-707 OF THIS SUBTITLE TO THE EXTENT NECESSARY TO COMPLY WITH THE DETERMINATION.

21-704.

(A) IF THE FINAL ADJUDICATION OF CHARGES RESULTS IN CONVICTION OF A PUBLIC EMPLOYEE, THE PUBLIC EMPLOYEE'S RETIREMENT ALLOWANCE SHALL BE FORFEITED IN WHOLE OR IN PART IN ACCORDANCE WITH THIS SECTION.

**(B) (1) ON CONVICTION OF A PUBLIC EMPLOYEE, THE ATTORNEY GENERAL OR STATE'S ATTORNEY SHALL FILE A COMPLAINT IN CIRCUIT COURT TO FORFEIT THE PUBLIC EMPLOYEE'S BENEFITS IN WHOLE OR IN PART.**

**(2) NOTICE OF THE COMPLAINT FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SERVED ON:**

- (I) THE PUBLIC EMPLOYEE;**
- (II) ANY KNOWN SPOUSE OF THE PUBLIC EMPLOYEE;**
- (III) ANY KNOWN DEPENDENTS OF THE PUBLIC EMPLOYEE;**
- (IV) THE PUBLIC EMPLOYEE'S DESIGNATED BENEFICIARIES;**
- (V) ANY FORMER SPOUSE WHO HAS BEEN ASSIGNED BENEFITS UNDER ~~A~~ AN EXISTING DOMESTIC RELATIONS ORDER; AND**
- (VI) THE STATE RETIREMENT AGENCY.**

**(3) NOTWITHSTANDING § 4-312 OF THE GENERAL PROVISIONS ARTICLE, ON WRITTEN REQUEST, THE STATE RETIREMENT AGENCY SHALL PROVIDE THE ATTORNEY GENERAL OR STATE'S ATTORNEY WITH AVAILABLE INFORMATION FROM THE RETIREMENT RECORDS OF THE PUBLIC EMPLOYEE TO ASSIST THE ATTORNEY GENERAL OR STATE'S ATTORNEY IN PROVIDING THE NOTICE REQUIRED UNDER THIS SUBSECTION.**

**(C) THE COURT SHALL ENTER AN ORDER REQUIRING THE FORFEITURE, IN WHOLE OR IN PART, OF THE PUBLIC EMPLOYEE'S BENEFITS IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:**

- (1) THE PUBLIC EMPLOYEE WAS CONVICTED OF A QUALIFYING CRIME;**
- (2) THE PUBLIC EMPLOYEE WAS A MEMBER OF THE EMPLOYEES' PENSION SYSTEM OR THE EMPLOYEES' RETIREMENT SYSTEM; AND**
- (3) THE QUALIFYING CRIME FOR WHICH THE PUBLIC EMPLOYEE WAS CONVICTED WAS COMMITTED WHILE THE PUBLIC EMPLOYEE WAS AN ACTIVE MEMBER OF THE EMPLOYEES' PENSION SYSTEM OR THE EMPLOYEES' RETIREMENT SYSTEM.**

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

(E) (1) AN ORDER REQUIRING FORFEITURE OF BENEFITS SHALL INDICATE THE AMOUNT OF BENEFITS ~~THAT ARE FORFEIT~~ TO BE FORFEITED.

(2) WHEN DETERMINING THE AMOUNT OF BENEFITS ~~THAT ARE FORFEIT~~ TO BE FORFEITED, THE COURT SHALL CONSIDER:

(I) THE SEVERITY OF THE CRIME;

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

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

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

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

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

(VII) ANY OTHER FACTORS THE COURT DETERMINES RELEVANT.

(F) (1) IF THE COURT ENTERS AN ORDER REQUIRING THE FORFEITURE OF BENEFITS, THE COURT MAY ENTER A DOMESTIC RELATIONS ORDER THAT PROVIDES THAT SOME OR ALL OF THE FORFEITED BENEFITS BE PAID TO AN INNOCENT A SPOUSE, DEPENDENT, OR BENEFICIARY FORMER SPOUSE, CHILD, OR OTHER DEPENDENT FOR PURPOSES OF CHILD SUPPORT, ALIMONY, OR MARITAL PROPERTY RIGHTS.

(2) ~~A SPOUSE, DEPENDENT, OR BENEFICIARY WHO RECEIVES BENEFITS UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL RECEIVE BENEFITS IN THE SAME MANNER AS A FORMER SPOUSE MAY RECEIVE BENEFITS UNDER A DOMESTIC RELATIONS ORDER~~ WHEN DETERMINING WHETHER TO ENTER A DOMESTIC RELATIONS ORDER UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE

COURT SHALL CONSIDER WHETHER THE PUBLIC EMPLOYEE'S SPOUSE, FORMER SPOUSE, CHILDREN, OR DEPENDENTS WERE CULPABLE OR COMPLICIT IN THE COMMISSION OF THE QUALIFYING CRIME.

(3) THE COURT MAY NOT ORDER BENEFITS TO BE PAID TO ~~AN INNOCENT SPOUSE, DEPENDENT, OR BENEFICIARY~~ A PUBLIC EMPLOYEE'S SPOUSE, FORMER SPOUSE, CHILD, OR OTHER DEPENDENT IN A MANNER THAT IS INCONSISTENT WITH THE PAYMENT OF BENEFITS IN THE STATE SYSTEM IN WHICH THE PUBLIC EMPLOYEE WAS A MEMBER.

(G) (1) AN ORDER REQUIRING A FORFEITURE OF BENEFITS ISSUED UNDER THIS SECTION MAY NOT IMPAIR OR ALTER ~~A~~ AN EXISTING DOMESTIC RELATIONS ORDER PROVIDING BENEFITS 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.

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

#### 21-705.

(A) IF A PUBLIC EMPLOYEE HAS RETIRED BEFORE A FORFEITURE ORDER IS ISSUED UNDER § 21-704 OF THIS SUBTITLE, THE BOARD OF TRUSTEES MAY RECOVER FROM THE PUBLIC EMPLOYEE THE AMOUNT OF BENEFITS PAID TO THE PUBLIC EMPLOYEE BEFORE THE ORDER.

(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 FORFEITURE ORDER BEEN ISSUED BEFORE THE PUBLIC EMPLOYEE BEGAN RECEIVING ANY BENEFITS AS A RETIREE.

#### 21-706.

(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 ~~ACCEPTED BY~~ 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 THAT DOES NOT RESULT IN CONVICTION.

**21-707.**

(A) (1) ON RECEIPT OF AN ORDER THAT REVERSES OR OVERTURNS A CONVICTION OF A PUBLIC EMPLOYEE, THE COURT THAT ISSUED A FORFEITURE ORDER UNDER § 21-704 OF THIS SUBTITLE SHALL RESCIND THE FORFEITURE ORDER AND ORDER THE BOARD OF TRUSTEES TO PAY ANY BENEFITS THAT ARE PAYABLE UNDER THIS DIVISION II OF THIS ARTICLE TO THE PUBLIC EMPLOYEE.

(2) WHEN A COURT RESCINDS A FORFEITURE ORDER UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL ALSO RESCIND ANY DOMESTIC RELATIONS ORDER ENTERED IN ACCORDANCE WITH § 21-704(F) OF THIS SUBTITLE.

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

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

(2) THE PUBLIC EMPLOYEE'S ALLOWANCE SHALL:

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

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

(3) BENEFIT PAYMENTS THAT WOULD HAVE BEEN MADE DURING THE TIME FROM THE DATE OF CONVICTION TO THE DATE THE CONVICTION IS OVERTURNED SHALL BE MADE TO THE PUBLIC EMPLOYEE, LESS ANY PAYMENTS MADE IN ACCORDANCE WITH ~~AN~~ A DOMESTIC RELATIONS ORDER DIRECTING PAYMENT OF BENEFITS TO AN INNOCENT SPOUSE, DEPENDENT, OR DESIGNATED BENEFICIARY A SPOUSE, FORMER SPOUSE, CHILD, OR OTHER DEPENDENT.

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

**21-708.**

**(A) A PUBLIC EMPLOYEE SUBJECT TO A FORFEITURE ORDER ISSUED UNDER § 21-704 OF THIS SUBTITLE IS ENTITLED TO A RETURN OF THE INDIVIDUAL'S ACCUMULATED CONTRIBUTIONS ON REQUEST UNDER § 29-501 OF THIS ARTICLE.**

**(B) THE PUBLIC EMPLOYEE'S ACCUMULATED CONTRIBUTIONS SHALL BE REDUCED BY AN AMOUNT EQUAL TO ANY BENEFIT PAYMENTS RECEIVED BY THE PUBLIC EMPLOYEE THAT WOULD HAVE BEEN SUBJECT TO FORFEITURE AND HAVE NOT BEEN RECOVERED BY THE BOARD OF TRUSTEES UNDER § 21-705 OF THIS SUBTITLE.**

**21-709.**

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

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

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July 1, 2016~~ January 9, 2019.

**Approved by the Governor, April 26, 2016.**