

# SENATE BILL 542

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By: **Senator Feldman**

Introduced and read first time: February 4, 2016

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of authorizing a certain assignment of benefits; establishing that certain  
4 public employees who are certain State officers may be subject to forfeiture of  
5 benefits from the State Retirement and Pension System; prohibiting the payment of  
6 certain benefits to a public employee who is found guilty of, pleads guilty to, or enters  
7 a plea of nolo contendere to a qualifying crime; prohibiting the forfeiture of benefits  
8 if the forfeiture negatively affects or invalidates the tax qualified status of a plan  
9 within the State Retirement and Pension System; requiring the forfeiture of benefits,  
10 in whole or in part, for a public employee who is convicted of a qualifying crime;  
11 requiring the Attorney General or State's Attorney to file a certain complaint in  
12 circuit court; requiring notice of the complaint to be sent to certain persons;  
13 establishing certain findings that shall be made when entering an order requiring  
14 the forfeiture of benefits; requiring the forfeiture order to indicate the amount of  
15 benefits forfeit; requiring a court to consider certain factors when determining the  
16 amount of benefits subject to forfeiture; clarifying that only certain service is subject  
17 to forfeiture; authorizing a court to order some or all of the forfeited benefits to be  
18 paid to certain individuals subject to certain limitations; prohibiting a forfeiture  
19 order from impairing or altering a domestic relations order; clarifying that a public  
20 employee may receive benefits as a beneficiary; clarifying that a public employee's  
21 interest in benefits of a former spouse is not subject to forfeiture; authorizing the  
22 Board of Trustees for the State Retirement and Pension System to recover certain  
23 payments made to a public employee subject to a forfeiture order; limiting the  
24 amount that may be recovered; authorizing certain public employees to submit an  
25 application for retirement; prohibiting the State Retirement Agency from processing  
26 a certain application for retirement until certain conditions are met; requiring a  
27 forfeiture order to be rescinded under certain circumstances; requiring certain  
28 payments to be made when a conviction is overturned; providing that a public  
29 employee subject to a forfeiture order is entitled to a return of employee contributions  
30 on request; authorizing certain employee contributions to be reduced under certain  
31 circumstances; requiring the Board of Trustees to adopt certain regulations;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 providing for the application of this Act; defining certain terms; and generally  
2 relating to the forfeiture of certain retirement benefits by certain constitutional  
3 officers with a criminal conviction.

4 BY repealing and reenacting, with amendments,

5 Article – State Personnel and Pensions

6 Section 21–502

7 Annotated Code of Maryland

8 (2015 Replacement Volume)

9 BY adding to

10 Article – State Personnel and Pensions

11 Section 21–701 through 21–709 to be under the new subtitle “Subtitle 7. Forfeiture  
12 of Benefits”

13 Annotated Code of Maryland

14 (2015 Replacement Volume)

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

17 **Article – State Personnel and Pensions**

18 21–502.

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

22 (2) A court of competent jurisdiction may expressly order that a benefit  
23 under this Division II be assigned in a decree or order of alimony, child support, or divorce,  
24 or in a court–approved property settlement incident to a court decree or order.

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

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

31 (1) written notice of the court decree or order; and

32 (2) any additional information that the Board of Trustees requires.

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

1                                   **SUBTITLE 7. FORFEITURE OF BENEFITS.**

2   **21-701.**

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

5           **(B) “DOMESTIC RELATIONS ORDER” MEANS AN ORDER ISSUED IN**  
6 **ACCORDANCE WITH § 21-502(A)(2) OF THIS TITLE ASSIGNING A BENEFIT IN A**  
7 **DECREE OR ORDER OF ALIMONY, CHILD SUPPORT, OR DIVORCE.**

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

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

12                   **(1) IS EMPLOYED IN A POSITION LISTED IN § 21-702 OF THIS**  
13 **SUBTITLE; AND**

14                   **(2) HAS BEEN CHARGED WITH A QUALIFYING CRIME.**

15           **(E) “QUALIFYING CRIME” MEANS A FELONY:**

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

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

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

22   **21-702.**

23           **(A) THIS SUBTITLE APPLIES TO AN INDIVIDUAL WHO:**

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

26                   **(2) HAS EARNED CREDITABLE SERVICE WHILE EMPLOYED AS:**

- 1           **(I) THE ATTORNEY GENERAL OF THE STATE;**  
2           **(II) THE COMPTROLLER OF THE STATE;**  
3           **(III) THE GOVERNOR OF THE STATE;**  
4           **(IV) THE LIEUTENANT GOVERNOR OF THE STATE;**  
5           **(V) THE SECRETARY OF STATE; OR**  
6           **(VI) THE TREASURER OF THE STATE.**

7           **(B) THIS SUBTITLE DOES NOT APPLY TO ANY SERVICE EARNED BEFORE**  
8 **JULY 1, 2016.**

9 **21-703.**

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

15           **(B) BENEFITS UNDER THIS DIVISION II MAY NOT BE FORFEITED OR**  
16 **REDUCED IF THE INTERNAL REVENUE SERVICE DETERMINES THAT THE**  
17 **FORFEITURE OR REDUCTION WILL NEGATIVELY AFFECT OR INVALIDATE THE TAX**  
18 **QUALIFIED STATUS OF ANY PLAN WITHIN THE STATE RETIREMENT AND PENSION**  
19 **SYSTEM.**

20 **21-704.**

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

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

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

29           **(I) THE PUBLIC EMPLOYEE;**

- 1                   (II) ANY KNOWN SPOUSE OF THE PUBLIC EMPLOYEE;
- 2                   (III) ANY KNOWN DEPENDENTS OF THE PUBLIC EMPLOYEE;
- 3                   (IV) THE PUBLIC EMPLOYEE'S DESIGNATED BENEFICIARIES;
- 4                   (V) ANY FORMER SPOUSE WHO HAS BEEN ASSIGNED BENEFITS  
5 UNDER A DOMESTIC RELATIONS ORDER; AND
- 6                   (VI) THE STATE RETIREMENT AGENCY.

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

10           (1) THE PUBLIC EMPLOYEE WAS CONVICTED OF A QUALIFYING  
11 CRIME;

12           (2) THE PUBLIC EMPLOYEE WAS A MEMBER OF THE EMPLOYEES'  
13 PENSION SYSTEM OR THE EMPLOYEES' RETIREMENT SYSTEM; AND

14           (3) THE QUALIFYING CRIME FOR WHICH THE PUBLIC EMPLOYEE WAS  
15 CONVICTED WAS COMMITTED WHILE THE PUBLIC EMPLOYEE WAS AN ACTIVE  
16 MEMBER OF THE EMPLOYEES' PENSION SYSTEM OR THE EMPLOYEES' RETIREMENT  
17 SYSTEM.

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

21           (E) (1) AN ORDER REQUIRING FORFEITURE OF BENEFITS SHALL  
22 INDICATE THE AMOUNT OF BENEFITS THAT ARE FORFEIT.

23           (2) WHEN DETERMINING THE AMOUNT OF BENEFITS THAT ARE  
24 FORFEIT, THE COURT SHALL CONSIDER:

25           (I) THE SEVERITY OF THE CRIME;

26           (II) THE AMOUNT OF MONETARY LOSS SUFFERED BY THE  
27 STATE, A COUNTY, A POLITICAL SUBDIVISION, OR A PERSON AS A RESULT OF THE  
28 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, DEPENDENTS, AND DESIGNATED BENEFICIARIES;

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

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

10 (F) (1) IF THE COURT ENTERS AN ORDER REQUIRING THE FORFEITURE  
11 OF BENEFITS, THE COURT MAY ORDER THAT SOME OR ALL OF THE FORFEITED  
12 BENEFITS BE PAID TO AN INNOCENT SPOUSE, DEPENDENT, OR BENEFICIARY.

13 (2) A SPOUSE, DEPENDENT, OR BENEFICIARY WHO RECEIVES  
14 BENEFITS UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL RECEIVE BENEFITS  
15 IN THE SAME MANNER AS A FORMER SPOUSE MAY RECEIVE BENEFITS UNDER A  
16 DOMESTIC RELATIONS ORDER.

17 (3) THE COURT MAY NOT ORDER BENEFITS TO BE PAID TO AN  
18 INNOCENT SPOUSE, DEPENDENT, OR BENEFICIARY IN A MANNER THAT IS  
19 INCONSISTENT WITH THE PAYMENT OF BENEFITS IN THE STATE SYSTEM IN WHICH  
20 THE PUBLIC EMPLOYEE WAS A MEMBER.

21 (G) (1) AN ORDER REQUIRING A FORFEITURE OF BENEFITS ISSUED  
22 UNDER THIS SECTION MAY NOT IMPAIR OR ALTER A DOMESTIC RELATIONS ORDER  
23 PROVIDING BENEFITS TO A FORMER SPOUSE OF A PUBLIC EMPLOYEE.

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

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

29 21-705.

30 (A) IF A PUBLIC EMPLOYEE HAS RETIRED BEFORE A FORFEITURE ORDER IS  
31 ISSUED UNDER § 21-704 OF THIS SUBTITLE, THE BOARD OF TRUSTEES MAY

1 RECOVER FROM THE PUBLIC EMPLOYEE THE AMOUNT OF BENEFITS PAID TO THE  
2 PUBLIC EMPLOYEE BEFORE THE ORDER.

3 (B) THE RECOVERY UNDER SUBSECTION (A) OF THIS SECTION IS LIMITED  
4 TO AN AMOUNT EQUAL TO THE BENEFITS THAT WOULD HAVE BEEN FORFEITED HAD  
5 THE FORFEITURE ORDER BEEN ISSUED BEFORE THE PUBLIC EMPLOYEE BEGAN  
6 RECEIVING ANY BENEFITS AS A RETIREE.

7 21-706.

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

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

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

13 (1) SHALL BE ACCEPTED BY THE STATE RETIREMENT AGENCY; AND

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

17 21-707.

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

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

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

27 (2) THE PUBLIC EMPLOYEE'S ALLOWANCE SHALL:

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

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

4                   **(3) BENEFIT PAYMENTS THAT WOULD HAVE BEEN MADE DURING THE**  
5 **TIME FROM THE DATE OF CONVICTION TO THE DATE THE CONVICTION IS**  
6 **OVERTURNED SHALL BE MADE TO THE PUBLIC EMPLOYEE, LESS ANY PAYMENTS**  
7 **MADE IN ACCORDANCE WITH AN ORDER DIRECTING PAYMENT OF BENEFITS TO AN**  
8 **INNOCENT SPOUSE, DEPENDENT, OR DESIGNATED BENEFICIARY.**

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

12 **21-708.**

13                   **(A) A PUBLIC EMPLOYEE SUBJECT TO A FORFEITURE ORDER ISSUED UNDER**  
14 **§ 21-704 OF THIS SUBTITLE IS ENTITLED TO A RETURN OF THE INDIVIDUAL'S**  
15 **ACCUMULATED CONTRIBUTIONS ON REQUEST UNDER § 29-501 OF THIS ARTICLE.**

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

21 **21-709.**

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

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

27                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
28 1, 2016.