

MAINE STATE LEGISLATURE

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R. 2012

L.D. 1831

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JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1351, L.D. 1831, Bill, "An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 2 MRSA §1-A, sub-§3 is enacted to read:

3. Forfeiture and restitution. The rights and benefits of a member or retiree under this section are subject to forfeiture or assignment to the member's spouse, dependent or former spouse in accordance with the provisions of Title 5, section 17062.

Sec. 2. 3 MRSA §703, sub-§2, as amended by PL 2007, c. 137, §1, is further amended to read:

2. Accumulated contributions available for child support. A member's accumulated contributions, ~~which that~~ are refundable under sections 805-A and 805-B, are available to satisfy a child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process; and

Sec. 3. 3 MRSA §703, sub-§3, as enacted by PL 1991, c. 746, §1 and affected by §10, is amended to read:

3. Qualified domestic relations order. The rights and benefits of a member or retiree under this chapter are subject to the rights of or assignment to an alternate payee, as defined in Title 5, section 17001, subsection 3-B, under a qualified domestic relations order in accordance with Title 5, section 17059-; and

Sec. 4. 3 MRSA §703, sub-§4 is enacted to read:

4. Forfeiture and restitution. The rights and benefits of a member or retiree under this chapter are subject to forfeiture or assignment to the member's spouse, dependent or former spouse in accordance with the provisions of Title 5, section 17062.

R. 45.

1 **Sec. 5. 4 MRSA §1203, sub-§2**, as amended by PL 2007, c. 137, §5, is further
2 amended to read:

3 **2. Accumulated contributions available for child support.** A member's
4 accumulated contributions, ~~which~~ that are refundable under sections 1305-A and 1305-B,
5 are available to satisfy a child support obligation that is otherwise enforceable by
6 execution, garnishment, attachment, assignment or other process; ~~and~~

7 **Sec. 6. 4 MRSA §1203, sub-§3**, as enacted by PL 1991, c. 746, §2 and affected
8 by §10, is amended to read:

9 **3. Qualified domestic relations order.** The rights and benefits of a member or
10 retiree under this chapter are subject to the rights of or assignment to an alternate payee,
11 as defined in Title 5, section 17001, subsection 3-B, under a qualified domestic relations
12 order in accordance with Title 5, section 17059-; and

13 **Sec. 7. 4 MRSA §1203, sub-§4** is enacted to read:

14 **4. Forfeiture and restitution.** The rights and benefits of a member or retiree under
15 this chapter are subject to forfeiture or assignment to the member's spouse, dependent or
16 former spouse in accordance with the provisions of Title 5, section 17062.

17 **Sec. 8. 5 MRSA §17054, sub-§2**, as amended by PL 2007, c. 137, §9, is further
18 amended to read:

19 **2. Accumulated contributions available for child support.** A member's
20 accumulated contributions, ~~which~~ that are refundable under sections 17705-A, 17706-A,
21 18306-A and 18307-A; are available to satisfy any child support obligation that is
22 otherwise enforceable by execution, garnishment, attachment, assignment or other
23 process;

24 **Sec. 9. 5 MRSA §17054, sub-§3**, as amended by PL 2009, c. 322, §1, is further
25 amended to read:

26 **3. Recovery of overpayments by the retirement system.** Any amounts due the
27 retirement system as the result of overpayment or erroneous payment of benefits, an
28 excess refund of contributions or overpayment or erroneous payment of life insurance
29 benefits may be recovered from an individual's contributions, any benefits or life
30 insurance benefits payable under this Part to the individual or the beneficiary of the
31 individual or any combination of contributions and benefits. If the overpayment or
32 excess refund of contributions resulted from a mistake of or incorrect information
33 provided by an employee of the retirement system, or a mistake of the retiree or the
34 recipient of the benefit or life insurance benefit, a penalty or interest may not be assessed
35 by the retirement system. In all cases of recovery of overpayments through the reduction
36 of a retirement benefit, whether with or without the assessment of interest by the
37 retirement system, the recovery practices must be reasonable and consider the personal
38 economic stability of the retiree in the establishment of the recovery schedule. The
39 executive director may also take action to recover those amounts due from any amounts
40 payable to the individual by any other state agency or by an action in a court of
41 competent jurisdiction. Whenever the executive director makes a decision to recover any
42 amounts under this subsection, that decision is subject to appeal under section 17451.

R. 26

1 Employers are responsible for enrolling employees in the correct retirement plan. The
2 retirement system shall provide training, education and information to assist employers in
3 the correct enrollment of employees. If an employee is enrolled in the incorrect
4 retirement plan by the employer through no fault of the employee, the employee may not
5 lose any retirement benefits. The State is not responsible for the employer contribution
6 when the employer is a school district, municipality or county and those contributions and
7 assessed interest, if applicable, must be paid to the retirement system by the school
8 district, municipality or county; and

9 **Sec. 10. 5 MRSA §17054, sub-§4**, as amended by PL 2005, c. 560, §1 and
10 affected by §5, is further amended to read:

11 **4. Qualified domestic relations order.** The rights of a member, retiree, beneficiary
12 or other payee under this Part are subject to the rights of or assignment to an alternate
13 payee under a qualified domestic relations order in accordance with section 17059; and

14 **Sec. 11. 5 MRSA §17054, sub-§5** is enacted to read:

15 **5. Forfeiture and restitution.** The rights and benefits of a member or retiree under
16 this Part are subject to forfeiture or assignment to the member's spouse, dependent or
17 former spouse in accordance with the provisions of Title 5, section 17062.

18 **Sec. 12. 5 MRSA §17062** is enacted to read:

19 **§17062. Forfeiture of benefits for crime; restitution**

20 **1. Crime.** If a member is convicted of or pleads guilty or no contest to a crime
21 committed in connection with the member's public office or public employment or to a
22 crime the member's position placed the member in a position to commit, the member's
23 right to receive any benefit or payment of any kind under this Part is subject to the
24 following.

25 A. If the penalties for the crime are greater than or equal to the penalties for a Class
26 C crime, the court may order the forfeiture of the member's right to receive any
27 benefit or payment of any kind under this Part except a return of the amount
28 contributed by the member to the retirement system without interest, subject to
29 paragraph B.

30 B. If the court orders the member to make restitution to the State or any political
31 subdivision of the State for monetary loss incurred as a result of the crime, the court
32 may order that restitution payments be made by the retirement system from the
33 amount contributed by the member to the retirement system.

34 C. Subject to the requirements of subsection 2, the court may award to the member's
35 spouse, dependent or former spouse as an alternate payee some or all of the amount
36 that, but for the forfeiture under paragraph A, may otherwise be payable. Upon order
37 of the court, the retirement system shall provide information concerning the member's
38 membership that the court considers relevant to the determination of the amount of an
39 award under this paragraph. In determining the award, the court shall consider the
40 totality of the circumstances, including, but not limited to:

41 (1) The role, if any, of the member's spouse, dependent or former spouse in
42 connection with the crime;

11.2.25

1 (2) The degree of knowledge, if any, possessed by the member's spouse,
2 dependent or former spouse in connection with the crime; and

3 (3) The extent to which the spouse, dependent or former spouse was relying on
4 the forfeited benefits.

5 **2. Benefit award requirements.** An award ordered under subsection 1, paragraph C
6 may not require the retirement system to:

7 A. Provide a type or form of benefit or an option not otherwise provided by the
8 retirement system;

9 B. Provide increased benefits determined on the basis of actuarial value; or

10 C. Take an action contrary to its governing laws or plan provisions other than the
11 direct payment of the benefit awarded to the spouse, dependent or former spouse.'

SUMMARY

13 This amendment replaces the bill but carries out the intent of the bill to give a court
14 discretion to order the forfeiture of retirement benefits of a member of the Maine Public
15 Employees Retirement System who commits a crime in connection with the member's
16 public office or public employment or a crime the member's position placed the member
17 in a position to commit.

18 The amendment includes members of the gubernatorial retirement system, legislative
19 retirement system and the judicial retirement system, as well as all other plans
20 administered by the Maine Public Employees Retirement System. It allows the court to
21 award to the spouse, dependent or former spouse of the employee benefits that would
22 otherwise be payable if not for the forfeiture because of the crime. The Maine Public
23 Employees Retirement System is required to provide information concerning the
24 member's membership that the court considers relevant to the determination of the
25 amount of an award pursuant to an order of the court.

26 The amendment clarifies that the Maine Public Employees Retirement System is not
27 required to provide any additional benefits or benefit options.