

HOUSE BILL No. 2666

By Committee on Federal and State Affairs

2-12

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system and systems thereunder; enacting the
3 Kansas public employees pension forfeiture act; conditions for
4 forfeiture; restitution to state for deposit in the crime victims
5 compensation fund.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) The provisions of sections 1 through 6, and
9 amendments thereto, shall be known and may be cited as the Kansas
10 public employees pension forfeiture act.

11 Sec. 2. As used in this act, unless otherwise provided or the context
12 otherwise requires:

13 (a) "Political subdivision" means a political or taxing subdivision of
14 the state, including boards, commissions, authorities, councils,
15 committees, subcommittees and other subordinate groups or administrative
16 units thereof, receiving or expending and supported in whole or in part by
17 public funds;

18 (b) "public official" or "public employee" means any person who is
19 elected or appointed to any public office or employment, including justices
20 of the supreme court, judges of the court of appeals, judges of district
21 courts, district magistrate judges and members of the legislature, or who is
22 acting or has acted on behalf of the state or a political subdivision or any
23 agency thereof, including, but not limited to, any person who has so acted
24 and is otherwise entitled to or is receiving retirement benefits, whether that
25 person is acting on a permanent or temporary basis and whether or not
26 compensated on a full-time or part-time basis. "Public official" or "public
27 employee" also means all persons who are members of any retirement
28 system funded in whole or in part by the state or any political subdivision.
29 For the purposes of this act, such persons are deemed to be engaged in
30 public employment. "Public official" or "public employee" does not
31 include independent contractors nor their employees or agents under
32 contract to the state or political subdivision nor does it apply to any person
33 performing tasks over which the state or political subdivision has no legal
34 right to control.

35 Sec. 3. (a) Notwithstanding any other provision of law, no public
36 official or public employee nor any beneficiary designated by such public

1 official or public employee, except an innocent spouse joint annuitant,
2 shall be entitled to receive any retirement or other benefit or payment of
3 any kind, except a return of the member's contribution paid into any
4 pension fund without interest, if such public official or public employee is
5 convicted of or pleads guilty or nolo contendere to any felony in any court
6 of record. Notwithstanding the provisions of this act to the contrary, the
7 innocent spouse of an active member shall be entitled to 50% of such
8 member's contributions and such innocent spouse's share shall not be
9 subject to a restitution order of a court. An innocent spouse joint annuitant
10 shall retain any benefit due to such joint annuitant pursuant to the
11 applicable joint annuitant option elected by the public official or public
12 employee. For the purposes of this section, "innocent spouse" means the
13 spouse of a public official or public employee who is designated as a joint
14 annuitant under the retirement system or the spouse of an active member
15 and who is found to be not guilty of, or otherwise liable for, the offense
16 which causes such public official or public employee to forfeit retirement
17 benefits pursuant to this act.

18 (b) Benefits shall be forfeited upon entry of a plea of guilty or nolo
19 contendere or upon initial conviction of a felony and no payment or partial
20 payment of benefits shall be made during the pendency of an appeal. Such
21 conviction or plea shall be deemed to be a breach of a public officer's or
22 public employee's contract with their employer. If a verdict of not guilty or
23 acquittal is rendered or the indictment or criminal information is dismissed
24 or quashed, then the public official or public employee shall be reinstated
25 as a member of the pension fund or retirement system and shall be entitled
26 to all benefits, including those accruing during the period of forfeiture, if
27 any.

28 (c) Each time a public officer or public employee is elected,
29 appointed, promoted or otherwise changes a job classification, there is a
30 termination and renewal of the contract for the purposes of this act.

31 (d) The appropriate retirement system board may retain a member's
32 contributions and interest thereon for the purpose of paying any fine
33 imposed upon the member of the system, or for the repayment of any
34 funds misappropriated by such member from the state or any political
35 subdivision.

36 (e) Notwithstanding any other provision of this act, the Kansas public
37 employees retirement system board of trustees shall not disburse any funds
38 to any person who has forfeited their right to benefits until the attorney
39 general has determined and certified that there has been no loss to the state
40 as a result of the conduct that resulted in forfeiture of benefits. If there is a
41 loss to the state, the board shall pay the amount of the loss to the state
42 treasurer from the member's contributions and the interest thereon.

43 Sec. 4. (a) Whenever a member is convicted of or pleads guilty or

1 nolo contendere to any felony in any court of record, the court shall order
2 the defendant to make a complete and full restitution to the state of any
3 monetary loss incurred as a result of such criminal offense.

4 (b) If the court fails to order such restitution, the state, through the
5 attorney general or a political subdivision, shall petition the court
6 pronouncing sentence for an order establishing the amount of restitution. If
7 the court does not have authority to order restitution, the state or the
8 political subdivision shall bring an original action for restitution.

9 (c) Notwithstanding any law or provision of law exempting the
10 pension account or benefits of any public official or public employee from
11 garnishment or attachment, whenever the court shall order restitution or
12 establish the amount of restitution due after petition, all sums then credited
13 to the defendant's account or payable to the defendant, including the
14 contributions except for a spouse's 50% share pursuant to section 3, and
15 amendments thereto, shall be available to satisfy such restitution order,
16 including all sums credited to the defendant in a plan established under
17 section 457 or 403(b) of the federal internal revenue code. Such orders
18 from such actions shall specify either a specific amount or specific
19 percentage of the amount of the pension or benefit or any accumulated
20 contributions due and owing from the retirement system to be distributed
21 by the retirement system pursuant to this act.

22 (d) The clerk of the court shall serve a copy of the court's order upon
23 the retirement system. The retirement board, administrator of the pension
24 fund or the employer of the defendant, upon being served with a copy of
25 the court's order, shall pay over all such pension benefits, contributions or
26 other benefits to the extent necessary to satisfy the order of restitution.

27 (e) Any moneys received or recovered by the state pursuant to the
28 provisions of the section shall be remitted to the state treasurer in
29 accordance with the provisions of K.S.A. 75-4215, and amendments
30 thereto. Upon receipt of each such remittance, the state treasurer shall
31 deposit the entire amount in the state treasury to the credit of the crime
32 victims compensation fund.

33 Sec. 5. If any provision or clause of this act or application thereof to
34 any person or circumstances is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect
36 without the invalid provision or application, and to this end the provisions
37 of this act are declared to be severable.

38 Sec. 6. This act shall take effect and be in force from and after its
39 publication in the statute book.