

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes

Be it enacted by the People of the State of Maine as follows:

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.

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

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

Sec. 6. 4 MRSA §1203, sub-§3, as enacted by PL 1991, c. 746, §2 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. 7. 4 MRSA §1203, 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.

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

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

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

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

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

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

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

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

5. Forfeiture and restitution. The rights and benefits of a member or retiree under this Part 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. 12. 5 MRSA §17062 is enacted to read:

§ 17062. Forfeiture of benefits for crime; restitution

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

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

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

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

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

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

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

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

- A. Provide a type or form of benefit or an option not otherwise provided by the retirement system;
- B. Provide increased benefits determined on the basis of actuarial value; or
- C. Take an action contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to the spouse, dependent or former spouse.

Effective 90 days following adjournment of the 125th
Legislature, Second Regular Session, unless otherwise indicated.