

# HOUSE . . . . . No. 20

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So much of the recommendations of the Massachusetts Teachers' Retirement Board (House, No. 18) as relates to pension forfeiture. Public Service.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)  
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An Act relative to pension forfeiture.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Paragraph (m) of subdivision 1 of section 5 of chapter 32 of the general  
2 laws, as appearing in the 2014 Official Edition, is hereby amended in line 76 by adding after the  
3 word “contrary”, the following: “except as provided in section 15 of this chapter,”.

4           SECTION 2. Subdivision 1 of section 10 of chapter 32 of the general laws, as appearing  
5 in the 2014 Official Edition, is hereby amended by striking the phrase “without moral turpitude  
6 on his part” in lines 6,9,84 and 126.

7           SECTION 3. Section 15 of chapter 32 of the general laws is hereby amended by striking  
8 everything after the title and inserting in place thereof the following new section 15.

9           Section 15.

10           (1) Initiation of Forfeiture Proceedings. Proceedings under this section may be initiated  
11 by the board or the commission. The board shall notify the member by certified mail when

proceedings are initiated. If the member refuses the delivery of the mail, it shall be deemed to have been received. Unless otherwise agreed to by the parties, a hearing shall be held no less than ten days nor more than ninety days after the member has received notification. The board shall conduct the hearing pursuant to the provisions of 840 CMR 10.12. The board shall prepare and file with its clerk or secretary a certificate containing its findings and decision, copies of which shall be sent to the proper parties within fifteen days after completion of such hearing.

(2) Forfeiture of a retirement allowance upon conviction. Upon final conviction of a felony criminal offense involving violation of the laws applicable to a member's office or position or arising out of and in the course of their employment, a member shall be subject to the forfeiture provisions of this section. A retirement board, upon notification of such conviction of a member, must hold a hearing to determine whether the crimes for which a member was convicted involved the laws applicable to the member's office or position or if said criminal offenses were committed while the member was in the course of his or her employment, the total value of the member's potential retirement benefits, and the amount of said benefits which shall be forfeited. For the purposes of this section, 'criminal offense involving violation of the laws applicable to a member's office or position,' shall also include, but not be limited to, in the case of a member whose primary job responsibilities involve contact with children or any member of the Massachusetts Teachers' Retirement System or a teacher who is a member of the Boston Retirement System, a conviction for knowing purchase or possession of visual material of a child depicted in sexual conduct under section 29C of chapter 272 of the general laws, or a conviction of a sex offense involving a child as defined in section 178C of chapter 6 of the general laws whom the member has contact with as part of his or her official duties, or a conviction of any

other sex offense or sexually violent offense, as those terms are defined in said section 178C, in which the victim was any person under the age of 18.

(3) Forfeiture amount. Any member with ten or more years of creditable service on the date of the offense who is subject to forfeiture under the foregoing paragraph (2) shall forfeit their retirement allowance as determined by the board. A member's allowance shall be reduced by either one-third, two-thirds, to a minimum allowance or their right to an allowance shall be forfeited entirely. Such minimum allowance shall be equal to the amount a member would receive in group 1 having ten years of creditable service and at the minimum age for a group 1 employee; provided that in no event shall a member whose pension has been reduced to the minimum allowance be eligible for any retirement benefit prior to reaching the minimum age for a group 1 employee; and provided further that, except in cases of total forfeiture, a reduced retirement allowance shall not be reduced below the amount of the annual annuity portion. Such reduced allowance shall be payable for the life of the member; provided that, if the member retires having elected option (c) the beneficiary shall receive, upon the death of the member, the option (c) survivor benefit as if forfeiture had not occurred, based on the age and actual creditable service at the time of the member's retirement, if the board determines that the beneficiary (i) had no role in the illegal conduct for which the member was convicted, (ii) did not have knowledge of the illegal conduct, and (iii) did not commit nor conspire to commit the murder or voluntary manslaughter of the member upon whom the retirement allowance is based. In the event the entire allowance is forfeited, the member shall not be entitled to receive a retirement allowance under the provisions of section one to 28, nor shall any beneficiary be entitled to receive a retirement allowance under such provisions on account of such member. Further, in the event of total forfeiture, unless otherwise prohibited by law, a member or

beneficiary shall receive only a return of their accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero. Any retirement allowance received by a member up to the decision of total forfeiture by a board shall be offset against and reduce the accumulated total deductions otherwise due the member. In determining the amount of the forfeiture the board must consider and make findings of fact relative to the following factors:

i. the severity of the crime for which the member was convicted including the sentence imposed as well as the maximum sentence provided for by law;

ii. the amount of monetary loss suffered by the state, municipality, political subdivision, or by any other person as a result of the crime for which the member was convicted or the financial gain realized by the member;

iii. the degree of public trust reposed in the member by virtue of the member's office or position and the degree to which it was violated;

iv. if the crime was part of a fraudulent scheme against the state or political subdivision, the role of the member in the fraudulent scheme;

v. any recommendation by the prosecuting attorney or their office to the degree of forfeiture; and

vi. any such other factors as, in the judgment of the board, justice may require.

Any member who has had their retirement allowance forfeited entirely or has had a portion of their retirement allowance forfeited under this paragraph shall be ineligible to become

a member of a different retirement system and is also prohibited from increasing their allowance from the forfeited amount except by cost of living increases granted pursuant to sections 102 and 103.

Any member who has had their retirement allowance forfeited entirely or has had a portion of their retirement allowance forfeited under this paragraph shall cease to be an active member of the retirement system and shall be ineligible for membership in any retirement system.

(4) Forfeiture for members having less than ten years of creditable service. Any member, having less than ten years of creditable service on the date the offense is committed, who upon conviction is subject to the provisions of this section shall forfeit all rights to a retirement allowance based upon any creditable service prior to and after the date of the offense and shall receive a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero. The member shall thereupon cease to be a member in the retirement system and shall be ineligible to become a member of any retirement system.

(5) Notification. If a current employer, last employer, the attorney general or a district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of the member's rights to a pension, or retirement allowance pursuant to this chapter, section 59 of chapter 30 or section 25 of chapter 268A, they shall immediately notify the retirement board and the commission of such conviction.

(6) Repayment of allowance. If a member's final conviction of an offense results in a forfeiture of rights under this chapter, the member shall forfeit, and the board shall require the

member to repay all benefits in excess of the allowable amount received after the date of the offense of which the member was convicted. Following a member's conviction and partial forfeiture, the member's retirement allowance will be reduced, upon such terms and conditions as the board may determine, until all excess payment amounts are recovered.

(7) Misreported Salary. In no event shall any member be entitled to receive a retirement allowance under this chapter, which is based upon a salary that was concealed from or knowingly misreported to the commonwealth, or any political subdivision, district or authority of the commonwealth. If a member concealed compensation from or knowingly misreported compensation to an entity to which the member was required to report the compensation, even if the reporting was not required for purposes of calculating the member's retirement allowance, the member's retirement allowance shall be based only upon the regular compensation actually reported to that entity or the amount reported to the board, whichever is lower. Unless otherwise prohibited by law, such member shall receive a return of any accumulated total deductions paid on amounts in excess of the compensation actually reported, but no interest shall be payable on the accumulated deductions returned to the member. The board shall notify the commission of any proceedings commenced pursuant to this subdivision and shall provide any and all documents relating to said proceedings upon request of the commission. Notwithstanding the waiver provisions of paragraph (a) of subdivision 3 of section 21 of chapter 32 of the general laws any calculations performed pursuant to this section will be submitted to the commission for approval.

(8) Appeal of Forfeiture. Any person who is aggrieved by a decision made pursuant to this section regarding the forfeiture of all or any portion of a member's retirement allowance under this section may, within thirty days after the certification of the decision bring a petition in

the superior court. This action shall be commenced in the Massachusetts Superior Court covering the geographic area in which a member resides or was convicted, or in Suffolk Superior Court. The court shall review all legal issues under a de novo standard, but may base its determination either on the administrative record below, or may, in its discretion, request additional evidence.

(9) Restitution. In no event shall any member after final conviction of an offense involving the funds or property of any governmental unit in which or by which he is employed or was employed at the time of his retirement or termination of service, as the case may be, or of any system of which he is a member, be entitled to receive a retirement allowance or a return of his accumulated total deductions under the provisions of sections one to twenty-eight inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member, unless and until full restitution for any such misappropriation has been made. Restitution may be made using all or a portion of the total deductions of the member on account with a retirement system. If restitution is made using the accumulated total deductions of the member on account with a retirement system then the annuity portion of any retirement allowance will be reduced when a retirement allowance becomes effective or when a retirement allowance is resumed, as the case may be. The pension portion of the retirement allowance shall remain unchanged from the allowance determined using the accumulated total deductions in the member's account prior to restitution.

SECTION 4. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line 63 by striking the phrase: "or any member who is aggrieved by any action taken or decision of a board or the public employee retirement administration commission rendered with reference to his dereliction of duty as set forth in section 15,".

144           SECTION 5. Subdivision 3 of section 16 of said chapter 32 is hereby amended in line  
145   113 by adding after the word “rendered”: , except decisions made or actions taken pursuant to  
146   section 15 of this chapter,.

147           SECTION 6. Section 105 of said chapter 32 is hereby amended by adding the following  
148   paragraph:

149           (d) Any member having had their retirement allowance forfeited entirely or having had  
150   any portion of their retirement allowance forfeited pursuant to section 15 of this chapter shall be  
151   ineligible for reinstatement to service under the provisions of this section.

152           SECTION 7. Paragraph (b) of subdivision (2) of section (8) of chapter 32 is hereby  
153   amended by inserting in line 105 after the word “compensation”: ; provided, however, that any  
154   member who has had their retirement allowance forfeited entirely or had any portion of their  
155   retirement allowance forfeited pursuant to section 15 shall not become an active member of the  
156   retirement system upon reinstatement but shall contribute to the deferred compensation fund  
157   established by section 64D of chapter 29.