

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1570  
By: Flores  
State Affairs  
4/25/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, corrections employees who commit certain felonies can still collect their retirement annuity.

S.B. 1570 seeks to prevent corrections officers who participate in criminal activities involving prison gangs from continuing to profit from their employment after they are convicted of a qualifying crime.

Under the terms of this bill, corrections officers would become ineligible to collect their service retirement annuity for a conviction of bribery, embezzlement, perjury, tampering with government records, engaging in organized criminal activity, misuse of information, abuse of official capacity, or conspiracy to commit one of those offenses. This bill also provides a safe harbor provision for an innocent spouse who may still be entitled to a portion of the annuity. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1570 amends current law relating to the effect of certain felony convictions of certain corrections employees.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to a public retirement system in SECTION 1 (Section 810.004, Government Code) of this bill.

Rulemaking authority is expressly granted to the governing body of a public retirement system in SECTION 1 (Section 810.004, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 810, Government Code, by adding Section 810.004, as follows:

Sec. 810.004. CERTAIN CORRECTIONS EMPLOYEES INELIGIBLE FOR RETIREMENT ANNUITY. (a) Defines "governing body of a public retirement system," "public retirement system," and "qualifying felony" for purposes of this section.

(b) Provides that this section applies only to a person who is:

(1) a member of the employee class of the Employees Retirement System of Texas (ERS) as described by Section 812.003 (Membership in Employee Class) because the person serves as a corrections officer for the Texas Department of Criminal Justice (TDCJ) or the Texas Juvenile Justice Department (TJJJ); or

(2) otherwise eligible for membership in a public retirement system wholly or partly because the person served as a corrections officer for TDCJ or TJJJ.

(c) Provides that, except as provided by Subsection (d), a member of a public retirement system is ineligible to receive a service retirement annuity under the

retirement system if the member is convicted of a qualifying felony for conduct arising directly from the member's service as a corrections officer.

(d) Requires the retirement system, on receipt of notice of a conviction under Subsection (j), any similar notice of a conviction of a qualifying felony from a United States district court or United States attorney, or any other information that the retirement system determines by rule is sufficient to establish a conviction of a qualifying felony, to suspend payments of a service retirement annuity to a person the system determines is ineligible to receive the annuity under Subsection (c). Provides that a person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2) (relating to entitling a person to compensation if the person has received a full pardon on a certain basis or been granted certain relief), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) is authorized to resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (e).

(e) Entitles a member who is ineligible to receive a service retirement annuity under Subsection (c) to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. Provides that a refund under this subsection is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony or other order of a court.

(f) Provides that benefits payable to an alternate payee under Chapter 804 (Domestic Relations Orders and Spousal Consent) who is recognized by a qualified domestic relations order established before the effective date of this subsection are not affected by a member's ineligibility to receive a service retirement annuity under Subsection (c).

(g) Provides that on conviction of a member for a qualifying felony:

(1) a court is authorized to, in the same manner as in a divorce or annulment proceeding, make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member; and

(2) a court is required to, if the member's service retirement annuity was partitioned or exchanged by written agreement of the spouses as provided by Subchapter B (Marital Property Agreement), Chapter 4, Family Code, before the member's commission of the offense, award the annuity forfeited by the member to the member's spouse as provided in the agreement.

(h) Provides that ineligibility for a service retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(i) Requires the governing body of a public retirement system to adopt rules and procedures to implement this section.

(j) Requires a court to notify the retirement system of the terms of a conviction of a person convicted of an offense described by Subsection (c).

(k) Provides that, notwithstanding any other provision of this section, if the spouse of a member convicted of a qualifying felony is convicted of the felony as a party to the offense as defined by Section 7.01 (Parties to Offenses), Penal Code, or of another qualifying offense arising out of the same criminal episode as defined by Section 3.01 (Definition), Penal Code, the spouse forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

SECTION 2. Amends Article 42.01, Code of Criminal Procedure, by adding Section 14 to provide that, in addition to the information described by Section 1 (relating to requiring a judgment to reflect certain information), the judgment should reflect affirmative findings entered pursuant to Article 42.0193.

SECTION 3. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0193, as follows:

Art. 42.0193. FINDING REGARDING OFFENSE RELATED TO CONDUCT OF CERTAIN CORRECTIONS EMPLOYEES. (a) Requires the judge, in the trial of an offense described by Section 810.004, Government Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the defendant is:

- (1) a member of the employee class described by Section 810.004(b)(1), Government Code, while a member of ERS because the person serves as a corrections officer TDCJ or TJJD; or
- (2) otherwise eligible for membership in a public retirement system wholly or partly because the person served as a corrections officer for TDCJ or TJJD.

(b) Requires a judge who makes the affirmative finding described by this article to make the determination and provide the notice required by Section 810.004(j), Government Code.

SECTION 4. Redesignates Section 810.002, Government Code, as added by Chapter 443 (S.B. 500), Acts of the 85th Legislature, Regular Session, 2017, as Section 810.003, Government Code.

SECTION 5. Makes application of Section 810.002, Government Code, as added by this Act, prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. Effective date: upon passage or September 1, 2019.