

By: Flores, et al.
(White)

S.B. No. 1570

Substitute the following for S.B. No. 1570:

By: Lambert

C.S.S.B. No. 1570

A BILL TO BE ENTITLED

AN ACT

relating to the effect of certain felony convictions of certain corrections employees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 810, Government Code, is amended by adding Section 810.004 to read as follows:

Sec. 810.004. CERTAIN CORRECTIONS EMPLOYEES INELIGIBLE FOR RETIREMENT ANNUITY. (a) In this section:

(1) "Governing body of a public retirement system" and "public retirement system" have the meanings assigned by Section 802.001.

(2) "Qualifying felony" means any felony involving an incarcerated member of a criminal street gang as defined by Section 71.01, Penal Code, including:

(A) bribery;

(B) the embezzlement, extortion, or other theft of public money;

(C) perjury;

(D) engaging in organized criminal activity;

(E) tampering with governmental record;

(F) misuse of official information;

(G) abuse of official capacity; or

(H) conspiracy or the attempt to commit any of the offenses described by Paragraphs (A)-(G).

1 (b) This section applies only to a person who is:

2 (1) a member of the employee class of the Employees
3 Retirement System of Texas as described by Section 812.003 because
4 the person serves as a corrections officer for the Texas Department
5 of Criminal Justice or the Texas Juvenile Justice Department; or

6 (2) otherwise eligible for membership in a public
7 retirement system wholly or partly because the person served as a
8 corrections officer for the Texas Department of Criminal Justice or
9 the Texas Juvenile Justice Department.

10 (c) Except as provided by Subsection (d), a member of a
11 public retirement system is not eligible to receive a service
12 retirement annuity under the retirement system if the member is
13 convicted of a qualifying felony for conduct arising directly from
14 the member's service as a corrections officer.

15 (d) The retirement system, on receipt of notice of a
16 conviction under Subsection (j), any similar notice of a conviction
17 of a qualifying felony from a United States district court or United
18 States attorney, or any other information that the retirement
19 system determines by rule is sufficient to establish a conviction
20 of a qualifying felony, shall suspend payments of a service
21 retirement annuity to a person the system determines is ineligible
22 to receive the annuity under Subsection (c). A person whose
23 conviction is overturned on appeal or who meets the requirements
24 for innocence under Section 103.001(a)(2), Civil Practice and
25 Remedies Code:

26 (1) is entitled to receive an amount equal to the
27 accrued total of payments and interest earned on the payments

1 withheld during the suspension period; and

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

5 (e) A member who is ineligible to receive a service
6 retirement annuity under Subsection (c) is entitled to a refund of
7 the member's service retirement annuity contributions, including
8 interest earned on those contributions. A refund under this
9 subsection is subject to an award of all or part of the member's
10 service retirement annuity contributions to a former spouse,
11 including as a just and right division of the contributions on
12 divorce, payment of child support, or payment of spousal
13 maintenance or contractual alimony or other order of a court.

14 (f) Benefits payable to an alternate payee under Chapter 804
15 who is recognized by a qualified domestic relations order
16 established before the effective date of this subsection are not
17 affected by a member's ineligibility to receive a service
18 retirement annuity under Subsection (c).

19 (g) On conviction of a member for a qualifying felony:

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

25 (2) a court shall, if the member's service retirement
26 annuity was partitioned or exchanged by written agreement of the
27 spouses as provided by Subchapter B, Chapter 4, Family Code, before

1 the member's commission of the offense, award the annuity forfeited
2 by the member to the member's spouse as provided in the agreement.

3 (h) Ineligibility for a service retirement annuity under
4 this section does not impair a person's right to any other
5 retirement benefit for which the person is eligible.

6 (i) The governing body of a public retirement system shall
7 adopt rules and procedures to implement this section.

8 (j) A court shall notify the retirement system of the terms
9 of a conviction of a person convicted of an offense described by
10 Subsection (c).

11 (k) Notwithstanding any other provision of this section, if
12 the spouse of a member convicted of a qualifying felony is convicted
13 of the felony as a party to the offense as defined by Section 7.01,
14 Penal Code, or of another qualifying offense arising out of the same
15 criminal episode as defined by Section 3.01, Penal Code, the spouse
16 forfeits the member's service retirement annuity and service
17 retirement contributions to the same extent as the member.

18 SECTION 2. Article 42.01, Code of Criminal Procedure, is
19 amended by adding Section 14 to read as follows:

20 Sec. 14. In addition to the information described by
21 Section 1, the judgment should reflect affirmative findings entered
22 pursuant to Article 42.0193.

23 SECTION 3. Chapter 42, Code of Criminal Procedure, is
24 amended by adding Article 42.0193 to read as follows:

25 Art. 42.0193. FINDING REGARDING OFFENSE RELATED TO CONDUCT
26 OF CERTAIN CORRECTIONS EMPLOYEES. (a) In the trial of an offense
27 described by Section 810.004, Government Code, the judge shall make

1 an affirmative finding of fact and enter the affirmative finding in
2 the judgment in the case if the judge determines that the defendant
3 is:

4 (1) a member of the employee class described by
5 Section 810.004(b)(1), Government Code, while a member of the
6 Employees Retirement System of Texas because the person serves as a
7 corrections officer for the Texas Department of Criminal Justice or
8 the Texas Juvenile Justice Department; or

9 (2) otherwise eligible for membership in a public
10 retirement system wholly or partly because the person served as a
11 corrections officer for the Texas Department of Criminal Justice or
12 the Texas Juvenile Justice Department.

13 (b) A judge who makes the affirmative finding described by
14 this article shall make the determination and provide the notice
15 required by Section 810.004(j), Government Code.

16 SECTION 4. Section 810.002, Government Code, as added by
17 Chapter 443 (S.B. 500), Acts of the 85th Legislature, Regular
18 Session, 2017, is redesignated as Section 810.003, Government Code,
19 to read as follows:

20 Sec. 810.003 [~~810.002~~]. CERTAIN ELECTED OFFICIALS
21 INELIGIBLE FOR RETIREMENT ANNUITY. (a) In this section:

22 (1) "Governing body of a public retirement system" and
23 "public retirement system" have the meanings assigned by Section
24 802.001.

25 (2) "Qualifying felony" means any felony involving:

26 (A) bribery;

27 (B) the embezzlement, extortion, or other theft

1 of public money;

2 (C) perjury;

3 (D) coercion of public servant or voter;

4 (E) tampering with governmental record;

5 (F) misuse of official information;

6 (G) conspiracy or the attempt to commit any of
7 the offenses described by Paragraphs (A)-(F); or

8 (H) abuse of official capacity.

9 (b) This section applies only to a person who is:

10 (1) a member of the elected class of the Employees
11 Retirement System of Texas as described by Section 812.002(a)(1) or
12 (2); or

13 (2) otherwise eligible for membership in a public
14 retirement system wholly or partly because the person was elected
15 or appointed to an elected office.

16 (c) Except as provided by Subsection (d), a member of a
17 public retirement system is not eligible to receive a service
18 retirement annuity under the retirement system if the member is
19 convicted of a qualifying felony committed while in office and
20 arising directly from the official duties of that elected office.

21 (d) The retirement system, on receipt of notice of a
22 conviction under Subsection (e) or (k), any similar notice of a
23 conviction of a qualifying felony from a United States district
24 court or United States attorney, or any other information that the
25 retirement system determines by rule is sufficient to establish a
26 conviction of a qualifying felony, shall suspend payments of a
27 service retirement annuity to a person the system determines is

1 ineligible to receive the annuity under Subsection (c). A person
2 whose conviction is overturned on appeal or who meets the
3 requirements for innocence under Section 103.001(a)(2), Civil
4 Practice and Remedies Code:

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

8 (2) may resume receipt of annuity payments on payment
9 to the retirement system of an amount equal to the contributions
10 refunded to the person under Subsection (f).

11 (e) Not later than the 30th day after the conviction of a
12 person of a qualifying felony, the governmental entity to which the
13 person was elected or appointed must provide written notice of the
14 conviction to the public retirement system in which the person is
15 enrolled. The notice must comply with the administrative rules
16 adopted by the public retirement system under Subsection (j).

17 (f) A member who is ineligible to receive a service
18 retirement annuity under Subsection (c) is entitled to a refund of
19 the member's service retirement annuity contributions, including
20 interest earned on those contributions. A refund under this
21 subsection is subject to an award of all or part of the member's
22 service retirement annuity contributions to a former spouse,
23 including as a just and right division of the contributions on
24 divorce, payment of child support, or payment of spousal
25 maintenance or contractual alimony or other order of a court.

26 (g) Benefits payable to an alternate payee under Chapter 804
27 who is recognized by a qualified domestic relations order

1 established before the effective date of this subsection are not
2 affected by a member's ineligibility to receive a service
3 retirement annuity under Subsection (c).

4 (h) On conviction of a member for a qualifying felony:

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

10 (2) a court shall, if the member's service retirement
11 annuity was partitioned or exchanged by written agreement of the
12 spouses as provided by Subchapter B, Chapter 4, Family Code, before
13 the member's commission of the offense, award the annuity forfeited
14 by the member to the member's spouse as provided in the agreement.

15 (i) Ineligibility for a service retirement annuity under
16 this section does not impair a person's right to any other
17 retirement benefit for which the person is eligible.

18 (j) The governing body of a public retirement system shall
19 adopt rules and procedures to implement this section.

20 (k) A court shall notify the retirement system of the terms
21 of a conviction of a person convicted of an offense described by
22 Subsection (c).

23 (l) Notwithstanding any other provision of this section, if
24 the spouse of a member convicted of a qualifying felony is convicted
25 of the felony as a party to the offense as defined by Section 7.01,
26 Penal Code, or of another qualifying offense arising out of the same
27 criminal episode as defined by Section 3.01, Penal Code, the spouse

1 forfeits the member's service retirement annuity and service
2 retirement contributions to the same extent as the member.

3 SECTION 5. Section 810.004, Government Code, as added by
4 this Act, applies only to a member of a public retirement system who
5 serves as a corrections officer and, on or after the effective date
6 of this Act, commits an offense that is a qualifying felony as
7 defined by that section. A person who commits a qualifying felony
8 before the effective date of this Act is subject to the law in
9 effect on the date the offense was committed, and the former law is
10 continued in effect for that purpose. For purposes of this section,
11 an offense was committed before the effective date of this Act if
12 any element of the offense occurred before that date.

13 SECTION 6. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2019.