



## Ohio Revised Code

### Section 2929.192 Forfeiture of retirement benefits on conviction.

Effective: July 29, 2011

Legislation: House Bill 123 - 129th General Assembly

(A) If an offender is being sentenced for any felony offense listed in division (D) of this section that was committed on or after May 13, 2008, if the offender committed the offense while serving in a position of honor, trust, or profit, and if the offender, at the time of the commission of the offense, was a member of any public retirement system or a participant in an alternative retirement plan, in addition to any other sanction it imposes under section 2929.14, 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code but subject to division (B) of this section, the court shall order the forfeiture to the public retirement system or alternative retirement plan in which the offender was a member or participant of the offender's right to a retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the offender's accumulated contributions, earned by reason of the offender's being a member of the public retirement system or alternative retirement plan. A forfeiture ordered under this division is part of, and shall be included in, the sentence of the offender. The court shall send a copy of the journal entry imposing sentence on the offender to the appropriate public retirement system or alternative retirement plan in which the offender was a member or participant.

(B) In any case in which a sentencing court is required to order forfeiture of an offender's right to a retirement allowance, pension, disability benefit, or other right or benefit under division (A) of this section, the offender may request a hearing regarding the forfeiture by delivering to the court prior to sentencing a written request for a hearing. If a request for a hearing is made by the offender prior to sentencing, the court shall conduct the hearing before sentencing. The court shall notify the offender, the prosecutor who handled the case in which the offender was convicted of or pleaded guilty to the offense for which the forfeiture order was imposed, and the appropriate public retirement system, or alternative retirement plan provider, whichever is applicable, or, if more than one is specified in the motion, the applicable combination of these, of the hearing. A hearing scheduled under this division shall be limited to a consideration of whether there is good cause based on evidence presented by the offender for the forfeiture order not to be issued. If the court determines based on evidence presented by the offender that there is good cause for the forfeiture order not to be issued, the court shall not issue the forfeiture order. If the offender does not request



a hearing prior to sentencing or if the court conducts a hearing but does not determine based on evidence presented by the offender that there is good cause for the forfeiture order not to be issued, the court shall order the forfeiture described in division (A) of this section in accordance with that division and shall send a copy of the journal entry imposing sentence on the offender to the appropriate public retirement system or alternative retirement plan in which the offender was a member or participant.

(C) Upon receipt of a copy of the journal entry imposing sentence on an offender under division (A) or (B) of this section that contains an order of forfeiture of a type described in that division, the public retirement system or alternative retirement plan in which the offender was a member or participant shall comply with the forfeiture order on application for a refund of the accumulated contributions of the member or participant.

(D) Division (A) of this section applies regarding an offender who is convicted of or pleads guilty to any of the following offenses committed on or after May 13, 2008, that is a felony and who committed the offense while serving in a position of honor, trust, or profit:

(1) A violation of section 2921.02 or 2923.32 of the Revised Code or a violation of section 2921.41 of the Revised Code that is a felony of the third degree;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (D)(1) of this section;

(3) A conspiracy to commit, attempt to commit, or complicity in committing any violation listed in division (D)(1) or described in division (D)(2) of this section.

(E) For purposes of divisions (A) and (D) of this section, a violation of section 2923.32 of the Revised Code or any other violation or offense that includes as an element a course of conduct or the occurrence of multiple acts is "committed on or after May 13, 2008," if the course of conduct continues, one or more of the multiple acts occurs, or the subject person's accountability for the course of conduct or for one or more of the multiple acts continues, on or after May 13, 2008.



(F) As used in this section:

(1)(a) For the period beginning May 13, 2008, and ending the day before the effective date of this amendment, "position of honor, trust, or profit" means any of the following:

(i) An elective office of the state or any political subdivision of the state;

(ii) A position on any board or commission of the state that is appointed by the governor or the attorney general;

(iii) A position as a public official or employee, as defined in section 102.01 of the Revised Code, who is required to file a disclosure statement under section 102.02 of the Revised Code;

(iv) A position as a prosecutor, as defined in section 2935.01 of the Revised Code;

(v) A position as a peace officer, as defined in section 2935.01 of the Revised Code, or as the superintendent or a trooper of the state highway patrol.

(b) On and after the effective date of this amendment, "position of honor, trust, or profit" has the same meaning as in division (F)(1)(a) of this section, except that it also includes a position in which, in the course of public employment, an employee has control over the expenditure of public funds of one hundred thousand dollars or more annually.

(2) "Public retirement system" and "alternative retirement plan" have the same meanings as in section 2907.15 of the Revised Code.

(3) "Accumulated contributions" means whichever of the following is applicable:

(a) Regarding an offender who is a member of the public employees retirement system, except as otherwise provided in division (F)(3)(a) of this section, "accumulated contributions" has the same meaning as in section 145.01 of the Revised Code. For a member participating in a PERS defined contribution plan, "accumulated contributions" means the contributions made under section 145.85 of the Revised Code and any earnings on those contributions. For a member participating in a PERS



defined contribution plan that includes definitely determinable benefits, "accumulated contributions" means the contributions made under section 145.85 of the Revised Code, any earnings on those contributions, and additionally any amounts paid by the member to purchase service credits.

(b) Regarding an offender who is or was a member of the Ohio police and fire pension fund, "accumulated contributions" means the amount payable to a member under division (G) of section 742.37 of the Revised Code.

(c) Regarding an offender who is a member of the state teachers retirement system, except as otherwise provided in division (F)(3)(c) of this section, "accumulated contributions" has the same meaning as in section 3307.50 of the Revised Code. For a member participating in an STRS defined contribution plan, "accumulated contributions" means the contributions made under section 3307.26 of the Revised Code to participate in a plan established under section 3307.81 of the Revised Code and any earnings on those contributions. For a member participating in a STRS defined contribution plan that includes definitely determinable benefits, "accumulated contributions" means the contributions made under section 3307.26 of the Revised Code to participate in a plan established under section 3307.81 of the Revised Code, any earnings on those contributions, and additionally any amounts paid by the member to purchase service credits.

(d) Regarding an offender who is or was a member of the school employees retirement system, "accumulated contributions" has the same meaning as in section 3309.01 of the Revised Code and also includes employee contributions made under section 3309.85 of the Revised Code and any earnings on those contributions.

(e) Regarding an offender who is or was a member of the state highway patrol retirement system, "accumulated contributions" has the same meaning as in section 5505.01 of the Revised Code.

(f) Regarding an offender who is or was participating in an alternative retirement plan, "accumulated contributions" means the amounts contributed to an alternative retirement plan participant's account by the plan participant pursuant to section 3305.06 of the Revised Code and any earnings on those contributions.