

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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*An Act to amend and reenact §§ 51.1-153, 51.1-205, 51.1-216, and 51.1-305 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.1-124.13, relating to the Virginia Retirement System; loss of benefits for certain felonious convictions.*

[H 2095]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 51.1-153, 51.1-205, 51.1-216, and 51.1-305 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 51.1-124.13 as follows:**

*§ 51.1-124.13. Loss of benefits; certain felony convictions.*

*A. No person shall be entitled to any of the benefits of this title as provided in this section if (i) he is convicted of a felony and (ii) the person's employer determines that the felony arose from misconduct occurring on or after July 1, 2011, in any position in which the person was a member covered for retirement purposes under any retirement system administered by the Board. Prior to making any such determination, the employer shall give the person reasonable prior written notice and provide an opportunity to be heard. The employer's determination may be appealed in a manner consistent with subsection E of § 2.2-3004, and no further proceedings shall follow the decision of the circuit court. The employer's determination shall become final 10 calendar days after the date of the initial determination if no appeal is filed, or the date of the decision of the circuit court if an appeal is filed. A reversal by the circuit court of the employer's determination shall render the determination null and void.*

*B. The Board shall implement the relinquishment of benefits under this title as soon as practicable after the employer notifies the Board of its final determination that the member's felony conviction arose from misconduct in any position in which the member was a member in service.*

*C. If the person is or becomes a member in service after relinquishment of benefits under subsection B, he shall be entitled to the benefits under this title based solely on his service occurring after the relinquishment.*

*D. Notwithstanding any provision of law to the contrary, any service credit lost from relinquishment of benefits under subsection B shall be ineligible for subsequent purchase.*

*E. The governing body of any locality served by a constitutional officer shall be considered that officer's employer for purposes of this section.*

**§ 51.1-153. Service retirement.**

*A. Normal retirement. - Any member in service at his normal retirement date with five or more years of creditable service may retire at any time upon written notification to the Board setting forth the date the retirement is to become effective. Any member in service who was denied membership prior to July 1, 1987, as a result of being age sixty or over when first employed may retire at any time after his normal retirement date and the requirement of having five or more years of service shall not apply.*

*B. Early retirement. - 1. Any member in service who has attained his fifty-fifth birthday with five or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective.*

*However, a person who becomes a member on or after July 1, 2010, under this chapter shall be allowed to retire under this subdivision prior to his normal retirement date only if the person is in service and has attained his sixtieth birthday with five or more years of creditable service, and the benefit for such person shall be calculated in accordance with the provisions of subdivision A 3 of § 51.1-155.*

*2. Subject to the provisions of subdivision 3, any state employee, teacher, or employee of a political subdivision who is a member of the retirement system may retire prior to his normal retirement date after attaining age fifty and thirty years of creditable service, upon written notification to the Board setting forth the date the retirement is to become effective. The benefit for such member shall be calculated in accordance with the provisions of subdivision A 1 of § 51.1-155.*

*3. A person who becomes a member on or after July 1, 2010, as a state employee, teacher, or employee of a political subdivision may retire prior to his normal retirement date after the sum of his age and years of creditable service equals 90, upon written notification to the Board setting forth the date the retirement is to become effective. The benefit for such member shall be calculated in accordance with the provisions of subdivision A 1 of § 51.1-155.*

*C. Deferred retirement for members terminating service. - Any member who terminates service after*

57 five or more years of creditable service, regardless of termination date, may retire under the provisions  
58 of subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to  
59 the effective date of his retirement or if he has five or more years of creditable service for which his  
60 employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of  
61 this subsection, any requirements as to the member being in service shall not apply. ~~No member shall be~~  
62 ~~entitled to the benefits of this subsection if his employer certifies that his service was terminated~~  
63 ~~because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the~~  
64 ~~Board.~~

65 D. 50/10 retirement. - Any member in service on or after January 1, 1994, who has attained his  
66 fiftieth birthday with ten or more years of creditable service may retire prior to his normal retirement  
67 date upon written notification to the Board setting forth the date the retirement is to become effective. A  
68 person who becomes a member on or after July 1, 2010, shall not be allowed to retire pursuant to this  
69 subsection.

70 E. Effective date of retirement. - The effective date of retirement shall be after the last day of service  
71 of the member, but shall not be more than ninety days prior to the filing of the notice of retirement.

72 F. Notification on behalf of member. - If the member is physically or mentally unable to submit  
73 written notification of his intention to retire, the member's appointing authority may submit notification  
74 on his behalf.

75 § 51.1-205. Service retirement generally.

76 A. Normal retirement. - Any member in service at his normal retirement date with five or more years  
77 of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a  
78 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (iii)  
79 while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board,  
80 setting forth the date the retirement is to become effective. Any member, except one appointed by the  
81 Governor or elected by the people, who attains 70 years of age shall be retired within 60 days of  
82 attaining age 70. Any employer, subsequent to the employee's normal retirement date, may provide for  
83 compulsory service retirement upon a determination that age is a bona fide occupational qualification  
84 reasonably necessary to the normal operation of the particular business or that the employee is incapable  
85 of performing his duties in a safe and efficient manner. Any such determination shall be made by the  
86 employer.

87 Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is  
88 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this  
89 chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements  
90 of this section, and §§ 51.1-138 and 51.1-216.

91 B. Early retirement. - Any member in service who has attained his fiftieth birthday with five or more  
92 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a  
93 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (iii)  
94 while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board  
95 setting forth the date the retirement is to become effective.

96 Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is  
97 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this  
98 chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements  
99 of this section, and §§ 51.1-138 and 51.1-216.

100 C. Deferred retirement for members terminating service. - Any member who terminates service after  
101 five or more years of creditable service (i) as a member in the retirement system established by this  
102 chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this  
103 title, or (iii) while earning the benefits permitted by § 51.1-138, may retire under the provisions of  
104 subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the  
105 effective date of his retirement or if he has five or more years of creditable service (a) as a member in  
106 the retirement system established by this chapter, (b) as a member in the retirement system established  
107 by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (c) while earning the benefits permitted by  
108 § 51.1-138, regardless of termination date, for which his employer has paid the contributions and such  
109 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the  
110 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection~~  
111 ~~if his employer certifies that his service was terminated because of dishonesty, malfeasance, or~~  
112 ~~misfeasance in office. The certification may be appealed to the Board.~~

113 Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is  
114 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this  
115 chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements  
116 of this section, and §§ 51.1-138 and 51.1-216.

117 D. Effective date of retirement. - The effective date of retirement shall be after the last day of

118 service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.  
119 E. Notification on behalf of member. - If the member is physically or mentally unable to submit  
120 written notification of his intention to retire, the member's appointing authority may submit notification  
121 on his behalf.

122 § 51.1-216. Service retirement generally.

123 A. Normal retirement.

124 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any  
125 employee who makes the election provided in § 51.1-221, who is a member in service in any retirement  
126 program administered by the Virginia Retirement System at his normal retirement date with five or more  
127 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a  
128 member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (iii) while  
129 earning the benefits permitted by § 51.1-138, may retire upon written notification to the Board, setting  
130 forth the date the retirement is to become effective.

131 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is  
132 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of  
133 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
134 requirements of this section, and §§ 51.1-138 and 51.1-205.

135 2. Any other employee who is a member in service at his normal retirement date with five or more  
136 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a  
137 member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (iii) while  
138 earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board, setting  
139 forth the date the retirement is to become effective.

140 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is  
141 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of  
142 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
143 requirements of this section, and §§ 51.1-138 and 51.1-205.

144 B. Early retirement.

145 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any  
146 employee who makes the election provided in § 51.1-221, who is a member in service in any retirement  
147 program administered by the Virginia Retirement System other than the program established by this  
148 chapter shall retire pursuant to the early retirement provisions of the retirement program of which he is a  
149 member at the time of retirement.

150 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is  
151 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of  
152 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
153 requirements of this section, and §§ 51.1-138 and 51.1-205.

154 2. Any other employee who is a member in service and who has attained his fiftieth birthday with  
155 five or more years of creditable service (i) as a member in the retirement system established by this  
156 chapter, (ii) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this  
157 title, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to  
158 the Board setting forth the date the retirement is to become effective.

159 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is  
160 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of  
161 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
162 requirements of this section, and §§ 51.1-138 and 51.1-205.

163 C. Deferred retirement for members terminating service.

164 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any  
165 employee who makes the election provided in § 51.1-221, who terminates service from any position with  
166 membership in any retirement program administered by the Virginia Retirement System, may retire  
167 under the provisions of subdivision A 1 or B 1 if (i) he is otherwise eligible for such benefits, (ii) he  
168 has not withdrawn his accumulated contributions prior to the effective date of his retirement, and (iii) he  
169 has five or more years of creditable service (a) as a member in the retirement system established by this  
170 chapter, (b) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this  
171 title, or (c) while earning the benefits permitted by § 51.1-138 for which his employer has paid the  
172 contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any  
173 requirements as to the member being in service shall not apply. No member shall be entitled to the  
174 benefits of this subsection if his employer certifies that his service was terminated because of  
175 dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

176 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is  
177 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of  
178 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting

179 requirements of this section, and §§ 51.1-138 and 51.1-205.

180 2. Any other member who terminates service after five or more years of creditable service (i) as a  
181 member in the retirement system established by this chapter, (ii) as a member in the retirement system  
182 established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (iii) while earning the benefits permitted by  
183 § 51.1-138 may retire under the provisions of subdivision A 2 or B 2 if he has not withdrawn his  
184 accumulated contributions prior to the effective date of his retirement or if he has five or more years of  
185 creditable service (a) as a member in the retirement system established by this chapter, (b) as a member  
186 in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (c) while earning  
187 the benefits permitted by § 51.1-138 for which his employer has paid the contributions and such  
188 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the  
189 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection~~  
190 ~~if his employer certifies that his service was terminated because of dishonesty, malfeasance, or~~  
191 ~~misfeasance in office. The certification may be appealed to the Board.~~

192 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is  
193 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of  
194 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
195 requirements of this section, and §§ 51.1-138 and 51.1-205.

196 D. Effective date of retirement. - The effective date of retirement shall be after the last day of  
197 service, but shall not be more than 90 days prior to the filing of the notice of retirement.

198 E. Notification on behalf of member. - If the member is physically or mentally unable to submit  
199 written notification of his intention to retire, the member's appointing authority may submit notification  
200 on his behalf.

201 § 51.1-305. Service retirement generally.

202 A. Normal retirement. - Any member in service at his normal retirement date with five or more years  
203 of creditable service may retire upon written notification to the Board setting forth the date the  
204 retirement is to become effective.

205 B. Early retirement.- Any member in service who has either (i) attained his fifty-fifth birthday with  
206 five or more years of creditable service or (ii) in the case of a member of any of the previous systems  
207 immediately prior to July 1, 1970, complied with the requirements for retirement set forth under the  
208 provisions of such previous system as in effect immediately prior to July 1, 1970, may retire upon  
209 written notification to the Board setting forth the date the retirement is to become effective.

210 B1. Mandatory retirement. - Any member who attains 70 years of age shall be retired 20 days after  
211 the convening of the next regular session of the General Assembly. However, if the mandatory  
212 retirement provisions of this subdivision would require a member of the State Corporation Commission  
213 to be retired before the end of his elected term and such retirement would occur during a session of the  
214 General Assembly in which the General Assembly is required, pursuant to § 12.1-6, to elect another  
215 member or members of the State Corporation Commission to serve either a regular term or a portion of  
216 a regular term, such member who otherwise would be subject to the mandatory retirement provisions of  
217 this subdivision shall be retired upon the first to occur of (i) the expiration of the term to which he was  
218 elected or (ii) 20 days after the commencing of the regular session of the General Assembly that  
219 immediately follows the date such member attains 72 years of age. The provisions of this subsection  
220 shall apply only to those members who are elected or appointed to an original or subsequent term  
221 commencing after July 1, 1993.

222 C. Deferred retirement for members terminating service. - Any member who terminates service after  
223 five or more years of creditable service may retire under the provisions of subsection A or B of this  
224 section, if he has not withdrawn his accumulated contributions prior to the effective date of his  
225 retirement or if he has five or more years of creditable service for which his employer has paid the  
226 contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any  
227 requirements as to the member being in service shall not apply. ~~No member shall be entitled to the~~  
228 ~~benefits of this subsection if his appointing authority certifies that his service was terminated because of~~  
229 ~~dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.~~

230 D. Effective date of retirement. - The effective date of retirement shall be after the last day of  
231 service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.

232 E. Notification of retirement. - In addition to the notice to the Board required by this section, the  
233 same notice shall be given by the member to his appointing authority. If a member is physically or  
234 mentally unable to submit written notification of his intention to retire, the member's appointing  
235 authority may submit notification to the Board on his behalf.