

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1192

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AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 5-10.3-8-9, AS AMENDED BY P.L.15-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) All benefits, refunds of contributions, and money in the fund are exempt from levy, sale, garnishment, attachment, or other legal process. However, the member's contributions or benefits, or both, may be transferred to reimburse the member's employer for loss resulting from the member's criminal taking of the employer's property by the board if the board receives adequate proof of the loss. The loss resulting from the member's criminal taking of the member's employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.

(b) The board may withhold payment of a member's contributions and interest if the employer of the member notifies the board that felony or misdemeanor charges accusing the member of the criminal taking of the employer's property have been filed.

(c) The board may withhold payment of a member's contributions and interest under subsection (b) until the final resolution of the criminal charges.

**(d) Subsections (b) and (c) do not apply to the:**

**(1) pension portion of the member's retirement benefit; or**

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**(2) disability retirement benefit of a member who becomes disabled.**

SECTION 2. IC 5-10.4-5-14, AS AMENDED BY P.L.15-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The benefits payable from the fund are exempt from seizure or levy on attachment, supplemental process, and all other processes. However, the member's contributions or benefits, or both, may be transferred by the board to reimburse the member's employer for loss resulting from the member's criminal taking of the employer's property if the board receives adequate proof of the loss. The loss resulting from the member's criminal taking of the member's employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.

(b) The board may withhold payment of a member's contributions and interest if the employer of the member notifies the board that felony or misdemeanor charges accusing the member of the criminal taking of the employer's property have been filed.

(c) The board may withhold payment of a member's contributions and interest under subsection (b) until the final resolution of the criminal charges.

**(d) Subsections (b) and (c) do not apply to the:**

- (1) pension portion of the member's retirement benefit; or**
- (2) disability retirement benefit of a member who becomes disabled.**

SECTION 3. IC 10-12-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) A person entitled to, having an interest in, or sharing a pension or benefit from the trust funds does not, before the actual payment of the pension or benefit, have the right to anticipate, sell, assign, pledge, mortgage, or otherwise dispose of or encumber the pension or benefit.

(b) A person's interest, share, pension, or benefit, before the actual payment of the interest, share, pension, or benefit, may not be:

- (1) used to satisfy the debts or liabilities of the person entitled to the interest, share, pension, or benefit;
- (2) subject to attachment, garnishment, execution, or levy or sale on judicial proceedings; or
- (3) transferred by any means, voluntarily or involuntarily.

(c) The trustee may pay from the trust fund the amounts that the trustee determines are proper and necessary expenses of the trust fund.

**(d) However, the person's contributions or benefits, or both, may be transferred to reimburse the person's employer for loss**



resulting from the person's criminal taking of the employer's property by the trustee if the trustee receives adequate proof of the loss. The loss resulting from the person's criminal taking of the employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.

(e) The trustee may withhold payment of the person's contributions and interest if the employer of the person notifies the trustee that felony or misdemeanor charges accusing the person of the criminal taking of the employer's property have been filed.

(f) The trustee may withhold payment of a person's contributions and interest under subsection (e) until the final resolution of the criminal charges.

**(g) Subsections (e) and (f) do not apply to the:**

- (1) monthly benefit of a retired employee beneficiary; or**
- (2) disability pension of an employee beneficiary with a disability.**

SECTION 4. IC 33-38-6-19.5 AS ADDED BY SEA 22-2019, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19.5. (a) All assets in the fund are exempt from levy, sale, garnishment, attachment, or other legal process. However, the participant's contributions or benefits, or both, may be transferred to reimburse the participant's employer for loss resulting from the participant's criminal taking of the employer's property by the board if the board receives adequate proof of the loss. The loss resulting from the participant's criminal taking of the participant's employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.

(b) The board may withhold payment of a participant's contributions and interest if the employer of the participant notifies the board that felony or misdemeanor charges accusing the participant of the criminal taking of the employer's property have been filed.

(c) The board may withhold payment of a participant's contributions and interest under subsection (b) until the final resolution of the criminal charges.

**(d) Subsections (b) and (c) do not apply to the:**

- (1) retirement benefit of a retired participant; or**
- (2) disability benefit of a participant who becomes permanently disabled.**

SECTION 5. IC 33-39-7-10.5 AS ADDED BY SEA 22-2019, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



UPON PASSAGE]: Sec. 10.5. (a) All assets in the fund are exempt from levy, sale, garnishment, attachment, or other legal process. However, a participant's contributions or benefits, or both, may be transferred to reimburse the participant's employer for loss resulting from the participant's criminal taking of the employer's property by the board if the board receives adequate proof of the loss. The loss resulting from the participant's criminal taking of the participant's employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.

(b) The board may withhold payment of a participant's contributions and interest if the employer of the participant notifies the board that felony or misdemeanor charges accusing the participant of the criminal taking of the employer's property have been filed.

(c) The board may withhold payment of a participant's contributions and interest under subsection (b) until the final resolution of the criminal charges.

**(d) Subsections (b) and (c) do not apply to the:**

**(1) retirement benefit of a retired participant; or**

**(2) disability benefit of a participant who is permanently disabled.**

SECTION 6. IC 35-43-4-2, AS AMENDED BY P.L.176-2018, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class A misdemeanor. However, the offense is:

(1) a Level 6 felony if:

(A) the value of the property is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000);

(B) the property is a:

(i) firearm;

(ii) motor vehicle (as defined in IC 9-13-2-105(a)); or

(iii) component part (as defined in IC 9-13-2-34) of a motor vehicle; or

(C) the person has a prior unrelated conviction for

(i) theft under this section; or

(ii) criminal conversion under section 3 of this chapter; and

(2) a Level 5 felony if:

(A) the value of the property is at least fifty thousand dollars (\$50,000);

(B) the property that is the subject of the theft is a valuable



metal (as defined in IC 25-37.5-1-1) and:

- (i) relates to transportation safety;
- (ii) relates to public safety; or
- (iii) is taken from a hospital or other health care facility, telecommunications provider, public utility (as defined in IC 32-24-1-5.9(a)), or key facility;

and the absence of the property creates a substantial risk of bodily injury to a person; or

(C) the property is a:

- (i) motor vehicle (as defined in IC 9-13-2-105(a)); or
- (ii) component part (as defined in IC 9-13-2-34) of a motor vehicle; and

the person has a prior unrelated conviction for theft of a motor vehicle (as defined in IC 9-13-2-105(a)) or theft of a component part (as defined in IC 9-13-2-34).

(b) For purposes of this section, "the value of property" means:

- (1) the fair market value of the property at the time and place the offense was committed; or
- (2) if the fair market value of the property cannot be satisfactorily determined, the cost to replace the property within a reasonable time after the offense was committed.

A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property.

**(c) If the offense described in subsection (a) is committed by a public servant who exerted unauthorized control over public funds (as defined by IC 5-22-2-23) from the public servant's employer, the employer may be reimbursed in accordance with IC 2-3.5-4-11, IC 2-3.5-5-9, IC 5-10-5.5-19, IC 5-10.3-8-9, IC 5-10.4-5-14, IC 10-12-2-10, IC 33-38-6-19.5, IC 33-39-7-10.5, IC 36-8-6-14, IC 36-8-7-22, IC 36-8-7.5-19, or IC 36-8-8-17.**

SECTION 7. IC 36-8-6-14, AS AMENDED BY P.L.127-2017, SECTION 245, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) If there is not sufficient money to the credit of the 1925 fund to pay all claims against it in full, claims arising from the death of members of the department shall be paid in full first with as little delay as possible, after which an equal percentage shall be paid upon all other claims to the full extent of the money on hand, until the fund is replenished.

(b) All pensions shall be paid by the treasurer of the local board at the treasurer's office at the same time and in the same installments as the members of the police department are paid.

(c) All pensions payable out of the 1925 fund are exempt from



seizure or levy upon attachment, execution, supplemental process, and all other process, whether mesne or final. Except as provided in section 21 of this chapter, pensions are not subject to sale, assignment, or transfer by a beneficiary.

**(d) However, the member's contributions or benefits, or both, may be transferred to reimburse the member's employer for loss resulting from the member's criminal taking of the employer's property by the treasurer of the local board if the treasurer receives adequate proof of the loss. The loss resulting from the member's criminal taking of the employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.**

**(e) The treasurer of the local board may withhold payment of the member's contributions and interest if the employer of the member notifies the treasurer that felony or misdemeanor charges accusing the member of the criminal taking of the employer's property have been filed.**

**(f) The treasurer of the local board may withhold payment of a person's contributions and interest under subsection (e) until the final resolution of the criminal charges.**

**(g) Subsections (e) and (f) do not apply to the:**

**(1) pension benefit of a retired member; or**

**(2) disability benefit of a member who becomes disabled.**

SECTION 8. IC 36-8-7-22, AS AMENDED BY P.L.146-2008, SECTION 778, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. **(a)** The 1937 fund may not be, either before or after an order for distribution to members of the fire department or to the surviving spouses or guardians of a child or children of a deceased, disabled, or retired member, held, seized, taken, subjected to, detained, or levied on by virtue of an attachment, execution, judgment, writ, interlocutory or other order, decree, or process, or proceedings of any nature issued out of or by a court in any state for the payment or satisfaction, in whole or in part, of a debt, damages, demand, claim, judgment, fine, or amercement of the member or the member's surviving spouse or children. The 1937 fund shall be kept and distributed only for the purpose of pensioning the persons named in this chapter. The local board may, however, annually expend an amount from the 1937 fund that it considers proper for the necessary expenses connected with the fund. Notwithstanding any other law, neither the fiscal body, the county board of tax adjustment, nor the department of local government finance may reduce these



expenditures.

**(b) However, the member's contributions or benefits, or both, may be transferred to reimburse the member's employer for loss resulting from the member's criminal taking of the employer's property by the local board if the local board receives adequate proof of the loss. The loss resulting from the member's criminal taking of the employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.**

**(c) The local board may withhold payment of the member's contributions and interest if the employer of the member notifies the local board that felony or misdemeanor charges accusing the member of the criminal taking of the employer's property have been filed.**

**(d) The local board may withhold payment of a person's contributions and interest under subsection (c) until the final resolution of the criminal charges.**

**(e) Subsections (c) and (d) do not apply to the:**

**(1) pension benefit of a retired member; or**

**(2) disability benefit of a member who becomes disabled.**

SECTION 9. IC 36-8-7.5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. **(a)** All pensions, annuities, and benefits payable out of the 1953 fund are exempt from seizure or levy upon attachment, garnishment, execution, and all other process. Except as provided in section 23 of this chapter, pensions, annuities, and benefits are not subject to sale, assignment, or transfer by a beneficiary.

**(b) However, the member's contributions or benefits, or both, may be transferred to reimburse the member's employer for loss resulting from the member's criminal taking of the employer's property by the local board if the local board receives adequate proof of the loss. The loss resulting from the member's criminal taking of the employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.**

**(c) The local board may withhold payment of the member's contributions and interest if the employer of the member notifies the local board that felony or misdemeanor charges accusing the member of the criminal taking of the employer's property have been filed.**

**(d) The local board may withhold payment of a person's contributions and interest under subsection (c) until the final**



resolution of the criminal charges.

**(e) Subsections (c) and (d) do not apply to the:**

**(1) pension benefit of a retired member; or**

**(2) disability benefit of a member who becomes disabled.**

SECTION 10. IC 36-8-8-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) The benefits of this chapter are exempt from attachment and garnishment and may not be seized, taken, or levied upon by any execution or process. **However, a fund member's contributions or benefits, or both, may be transferred to reimburse the fund member's employer for loss resulting from the fund member's criminal taking of the employer's property by the system board if the system board receives adequate proof of the loss. The loss resulting from the fund member's criminal taking of the employer's property must be proven by an order for restitution in favor of the employer issued by the sentencing court following a felony or misdemeanor conviction.**

**(b) The system board may withhold payment of a fund member's contributions and interest if the employer of the fund member notifies the board that felony or misdemeanor charges accusing the participant of the criminal taking of the employer's property have been filed.**

**(c) The system board may withhold payment of a fund member's contributions and interest under subsection (b) until the final resolution of the criminal charges.**

**(d) Subsections (b) and (c) do not apply to the:**

**(1) retirement benefit of a retired fund member; or**

**(2) disability benefit of a fund member who becomes disabled.**

~~(b)~~ **(e)** Except as provided in subsection ~~(e)~~ **(f)** and section 17.2 of this chapter, a person receiving a benefit under this chapter may not transfer, assign, or sell the benefit.

~~(e)~~ **(f)** Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1977 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

SECTION 11. **An emergency is declared for this act.**





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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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