

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILLNo. **611** Session of
2017

INTRODUCED BY DiSANTO, AUMENT, FOLMER, LANGERHOLC, MARTIN,
RAFFERTY, VULAKOVICH, WHITE, WAGNER, RESCHENTHALER,
McILHINNEY, REGAN AND MENSCH, APRIL 17, 2017

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 12, 2018

AN ACT

1 Amending the act of July 8, 1978 (P.L.752, No.140), entitled "An
2 act providing for the forfeiture of the pensions of certain
3 public employees and authorizing the State or political
4 subdivision to garnish the pension benefits of certain public
5 officers and employees upon conviction of certain criminal
6 activity related to their office or position of employment,"
7 further providing for definitions, for disqualification and
8 forfeiture of benefits and for restitution for monetary loss;
9 and repealing a retroactivity provision.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. The definitions of "crimes related to public
13 office or public employment" and "public official" or "public
14 employee" in section 2 of the act of July 8, 1978 (P.L.752,
15 No.140), known as the Public Employee Pension Forfeiture Act,
16 are amended and the section is amended by adding definitions to
17 read:

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall
20 have, unless the context clearly indicates otherwise, the

1 meanings given to them in this section:

2 "Benefits administrator." A retirement board, pension fund
3 administrator or employer that manages, controls or maintains a
4 pension system for public officials or public employees.

5 "Crimes related to public office or public employment." Any
6 of the criminal offenses as set forth in the following
7 provisions of Title 18 (Crimes and Offenses) of the Pennsylvania
8 Consolidated Statutes or other enumerated statute when committed
9 by a public official or public employee through his public
10 office or position or when his public employment places him in a
11 position to commit the crime:

12 Any of the criminal offenses set forth in Subchapter B of
13 Chapter 31 (relating to definition of offenses) when the
14 criminal offense is committed by a school employee ~~as defined~~ <--
15 in 24 Pa.C.S. § 8102 (relating to definitions) ~~against a~~ <--
16 student.

17 Section 3922 (relating to theft by deception) when the
18 criminal culpability reaches the level of a misdemeanor of the
19 first degree or higher.

20 Section 3923 (relating to theft by extortion) when the
21 criminal culpability reaches the level of a misdemeanor of the
22 first degree or higher.

23 Section 3926 (relating to theft of services) when the
24 criminal culpability reaches the level of a misdemeanor of the
25 first degree or higher.

26 Section 3927 (relating to theft by failure to make required
27 disposition of funds received) when the criminal culpability
28 reaches the level of a misdemeanor of the first degree or
29 higher.

30 Section 4101 (relating to forgery).

1 Section 4104 (relating to tampering with records or
2 identification).

3 Section 4113 (relating to misapplication of entrusted
4 property and property of government or financial institutions)
5 when the criminal culpability reaches the level of misdemeanor
6 of the second degree.

7 [Section 4701 (relating to bribery in official and political
8 matters).]

9 Section 4702 (relating to threats and other improper
10 influence in official and political matters).

11 [Section 4902 (relating to perjury).]

12 Section 4903(a) (relating to false swearing).

13 Section 4904 (relating to unsworn falsification to
14 authorities).

15 Section 4906 (relating to false reports to law enforcement
16 authorities).

17 [Section 4909 (relating to witness or informant taking
18 bribe).]

19 Section 4910 (relating to tampering with or fabricating
20 physical evidence).

21 Section 4911 (relating to tampering with public records or
22 information).

23 Section 4952 (relating to intimidation of witnesses or
24 victims).

25 Section 4953 (relating to retaliation against witness, victim
26 or party).

27 Section 5101 (relating to obstructing administration of law
28 or other governmental function).

29 Section 5301 (relating to official oppression).

30 Section 5302 (relating to speculating or wagering on official

1 action or information).

2 Article III of the act of March 4, 1971 (P.L.6, No.2), known
3 as the "Tax Reform Code of 1971."

4 Any criminal offense under the laws of this Commonwealth
5 classified as a felony or punishable by a term of imprisonment
6 exceeding five years.

7 In addition to the foregoing specific crimes, the term also
8 includes all criminal offenses; <--

9 ~~(1) under 18 U.S.C. §§ 371 (relating to conspiracy to~~
10 ~~commit offense or to defraud United States) and 1341~~
11 ~~(relating to frauds and swindles); and~~

12 ~~(2) as set forth in Federal law substantially the same~~
13 ~~as the crimes enumerated herein[.];~~

14 ~~(i) classified as a felony; or~~

15 ~~(ii) punishable by a term of imprisonment exceeding~~
16 ~~five years.~~ AS SET FORTH IN FEDERAL LAW AND THE LAWS OF <--

17 ANOTHER STATE SUBSTANTIALLY THE SAME AS THE CRIMES
18 ENUMERATED HEREIN. THE TERM ALSO INCLUDES FELONY OFFENSES
19 UNDER 18 U.S.C. §§ 371 (RELATING TO CONSPIRACY TO COMMIT
20 OFFENSE OR TO DEFRAUD UNITED STATES) AND 1341 (RELATING
21 TO FRAUDS AND SWINDLES).

22 * * *

23 "Public official" or "public employee." Any person who is
24 elected or appointed to any public office or employment
25 including justices, judges and [justices of the peace]
26 magisterial district judges and members of the General Assembly
27 or who is acting or who has acted in behalf of the Commonwealth
28 or a political subdivision or any agency thereof including but
29 not limited to any person who has so acted and is otherwise
30 entitled to or is receiving retirement benefits whether that

1 person is acting on a permanent or temporary basis and whether
2 or not compensated on a full or part-time basis. This term shall
3 not include independent contractors nor their employees or
4 agents under contract to the Commonwealth or political
5 subdivision nor shall it apply to any person performing tasks
6 over which the Commonwealth or political subdivision has no
7 legal right of control. However, this term shall include all
8 persons who are members of any retirement system funded in whole
9 or in part by the Commonwealth or any political subdivision. For
10 the purposes of this act such persons are deemed to be engaged
11 in public employment.

12 ~~"School employee." As defined in 24 Pa.C.S. § 8102 (relating <--
13 to definitions).~~

14 ~~"Student." An individual who is:~~

- 15 ~~(1) instructed by a school employee;~~
16 ~~(2) supervised by a school employee;~~
17 ~~(3) counseled by a school employee; or~~
18 ~~(4) mentored by a school employee.~~

19 ~~Section 2. Sections 3(a), (b) and (d) and 4(a) and (d) of~~
20 ~~the act are amended to read:~~

21 SECTION 2. SECTION 3(A), (B) AND (D) OF THE ACT ARE AMENDED <--
22 AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

23 Section 3. Disqualification and forfeiture of benefits.

24 (a) Notwithstanding any other provision of law, no public
25 official or public employee nor any beneficiary designated by
26 such public official or public employee shall be entitled to
27 receive any retirement or other benefit or payment of any kind
28 except a return of the contribution paid into any pension fund
29 without interest, if such public official or public employee is
30 [convicted] found guilty of a crime related to public office or

1 public employment or pleads guilty or no [defense] contest to
2 any crime related to public office or public employment.

3 (b) [The benefits shall be forfeited upon entry of a plea of
4 guilty or no defense or upon initial conviction and no payment
5 or partial payment shall be made during the pendency of an
6 appeal. If] The benefits shall be forfeited retroactive to the
7 date of the public official's or public employee's plea of
8 guilty or no contest or upon initial entry of a jury verdict or
9 judicial order of guilty, with respect to any crimes related to
10 public office or public employment. The sentencing court shall <--
11 transmit the notice to the appropriate benefits administrator
12 within three business days after entry of the plea, verdict or
13 order. The forfeiture shall not be stayed or affected by
14 pendency of an appeal or collateral attack on the plea, verdict
15 or order, regardless of whether a court has entered or stayed
16 the sentence pending the appeal or collateral attack. If a plea,
17 verdict or order is vacated and a verdict of not guilty is
18 rendered or the indictment or criminal information finally
19 dismissed, then the public official or public employee shall be
20 reinstated as a member of the pension fund or system and shall
21 be entitled to all benefits including those accruing during the
22 period of forfeiture if any. Such [conviction or] plea, verdict
23 or order shall be deemed to be a breach of a public officer's or
24 public employee's contract with his employer.

25 * * *

26 (d) The appropriate [retirement board] benefits
27 administrator may retain a member's contributions and interest
28 thereon for the purpose of paying any fine imposed upon the
29 member of the fund by a court of competent jurisdiction, or for
30 the repayment of any funds misappropriated by such member from

1 the Commonwealth or any political subdivision.

2 * * *

3 (F) THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS SHALL <--
4 PROVIDE THE STATE EMPLOYEES' RETIREMENT SYSTEM AND THE PUBLIC
5 SCHOOL EMPLOYEES' RETIREMENT SYSTEM THE INFORMATION NECESSARY TO
6 FULFILL THE DUTIES UNDER SUBSECTION (B).

7 SECTION 3. SECTION 4(A) AND (D) OF THE ACT ARE AMENDED TO
8 READ:

9 Section 4. Restitution for monetary loss.

10 (a) Whenever any public official or public employee who is a
11 member of any pension system funded by public moneys [is
12 convicted or pleads guilty or pleads no defense] enters a plea
13 of guilty or no contest in any court of record to any crime
14 related to a public office or public employment and which plea
15 is accepted by the court or whenever there is initial entry of a
16 jury verdict or judicial order of guilty against the public
17 official or public employee in any court of record to any crime
18 related to a public office or public employment, the court shall
19 order the defendant to make complete and full restitution to the
20 Commonwealth or political subdivision of any monetary loss
21 incurred as a result of the criminal offense.

22 * * *

23 (d) [The retirement board, administrator of the pension fund
24 or employer of the defendant] ~~Upon the finding of guilty of a~~ <--
25 ~~public official or public employee, or upon the entry of a plea~~
26 ~~of guilty or no contest in any court of record by a public~~
27 ~~official or public employee and which plea is accepted by the~~
28 ~~court, the court shall notify the appropriate benefits~~
29 ~~administrator of such finding or plea within three business days~~
30 ~~of the finding or plea.~~ Until restitution is determined by a

1 court, the appropriate benefits administrator shall not make
2 payment of any refund of contributions applied for after the
3 date of such finding or entry to the public official or public
4 employee until the court notifies the appropriate benefits
5 administrator that no restitution is due. The court shall notify
6 the appropriate benefits administrator if restitution is or is
7 not ordered and the amount, if applicable. The appropriate
8 benefits administrator, upon being served with a copy of the
9 court's order, shall pay over all such pension benefits,
10 contributions or other benefits to the extent necessary to
11 satisfy the order of restitution.

12 Section 3 4. Section 7 of the act is repealed: <--
13 [Section 7. Retroactively.

14 The provisions of this act shall be retroactive to December
15 1, 1972.]

16 Section 4 5. The following provisions apply to crimes <--
17 related to public office or public employment committed on or
18 after the effective date of this section:

19 (1) The amendment or addition of the definitions of
20 "benefits administrator," "crimes related to public office or
21 public employment" ~~except for the editorial change in the~~ <--
22 ~~second paragraph of the definition, EMPLOYMENT," and "public~~ <--
23 official" or "public employee" in section 2 of the act.

24 (2) The amendment of section 3(a), (b) and (d) of the
25 act.

26 (3) The amendment of section 4(a) and (d) of the act.

27 (4) The repeal of section 7 of the act.

28 Section 5 6. This act shall take effect ~~immediately.~~ AS <--
29 FOLLOWS:

30 (1) THE ADDITION OF SECTION 3(F) OF THE ACT SHALL TAKE

1 EFFECT IN 60 DAYS.

2 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
3 IMMEDIATELY.