

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 787 Session of  
2015

INTRODUCED BY BOBACK, DIAMOND, HELM, WATSON, TOEPEL, PETRI,  
HAHN, SIMMONS, GOODMAN, TALLMAN, KAVULICH, ROZZI, MURT,  
BENNINGHOFF, BARRAR, MOUL, TOOHL AND JOZWIAK, MARCH 13, 2015

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, APRIL 14, 2015

## 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.

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

11 ~~Section 1. The definition of "crimes related to public~~ <--  
12 ~~office or public employment" in section 2 of the act of July 8,~~  
13 ~~1978 (P.L.752, No.140), known as the Public Employee Pension~~  
14 ~~Forfeiture Act, amended July 15, 2004 (P.L.733, No.86), is~~  
15 ~~amended and the section is amended by adding definitions to~~  
16 ~~read:~~

17 SECTION 1. THE DEFINITIONS OF "CRIMES RELATED TO PUBLIC <--  
18 OFFICE OR PUBLIC EMPLOYMENT" AND "PUBLIC OFFICIAL" OR "PUBLIC  
19 EMPLOYEE" IN SECTION 2 OF THE ACT OF JULY 8, 1978 (P.L.752,  
20 NO.140), KNOWN AS THE PUBLIC EMPLOYEE PENSION FORFEITURE ACT,

1 AMENDED JULY 15, 2004 (P.L.733, NO.86), ARE AMENDED AND THE  
2 SECTION IS AMENDED BY ADDING DEFINITIONS TO READ:

3 Section 2. Definitions.

4 The following words and phrases when used in this act shall  
5 have, unless the context clearly indicates otherwise, the  
6 meanings given to them in this section:

7 "BENEFITS ADMINISTRATOR." A RETIREMENT BOARD, PENSION FUND <--  
8 ADMINISTRATOR OR EMPLOYER THAT MANAGES, CONTROLS OR MAINTAINS A  
9 PENSION SYSTEM FOR PUBLIC OFFICIALS OR PUBLIC EMPLOYEES.

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

17 Any of the criminal offenses set forth in Subchapter B of  
18 Chapter 31 (relating to definition of offenses) when the  
19 criminal offense is committed by a school employee [as  
20 defined in 24 Pa.C.S. § 8102 (relating to definitions)]  
21 against a student.

22 Section 2713 (relating to neglect of care-dependent  
23 person).

24 Section 3124.2 (relating to institutional sexual  
25 assault).

26 Section 3922 (relating to theft by deception) when the  
27 criminal culpability reaches the level of a misdemeanor of  
28 the first degree or higher.

29 Section 3923 (relating to theft by extortion) when the  
30 criminal culpability reaches the level of a misdemeanor of

1 the first degree or higher.

2 Section 3926 (relating to theft of services) when the  
3 criminal culpability reaches the level of a misdemeanor of  
4 the first degree or higher.

5 Section 3927 (relating to theft by failure to make  
6 required disposition of funds received) when the criminal  
7 culpability reaches the level of a misdemeanor of the first  
8 degree or higher.

9 Section 4101 (relating to forgery).

10 Section 4104 (relating to tampering with records or  
11 identification).

12 Section 4113 (relating to misapplication of entrusted  
13 property and property of government or financial  
14 institutions) when the criminal culpability reaches the level  
15 of misdemeanor of the second degree.

16 Section 4304 (relating to endangering welfare of  
17 children).

18 Section 4701 (relating to bribery in official and  
19 political matters).

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

22 Section 4902 (relating to perjury).

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

24 Section 4904 (relating to unsworn falsification to  
25 authorities).

26 Section 4906 (relating to false reports to law  
27 enforcement authorities).

28 Section 4909 (relating to witness or informant taking  
29 bribe).

30 Section 4910 (relating to tampering with or fabricating

1 physical evidence).

2 Section 4911 (relating to tampering with public records  
3 or information).

4 Section 4952 (relating to intimidation of witnesses or  
5 victims).

6 Section 4953 (relating to retaliation against witness,  
7 victim or party).

8 Section 5101 (relating to obstructing administration of  
9 law or other governmental function).

10 Section 5123 (relating to contraband).

11 Section 5301 (relating to official oppression).

12 Section 5302 (relating to speculating or wagering on  
13 official action or information).

14 Section 6301(a)(1) (relating to corruption of minors).

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

17 In addition to the foregoing specific crimes, the term also  
18 includes all criminal offenses as set forth in Federal law  
19 substantially the same as the crimes enumerated herein.

20 \* \* \*

21 "PUBLIC OFFICIAL" OR "PUBLIC EMPLOYEE." ANY PERSON WHO IS <--  
22 ELECTED OR APPOINTED TO ANY PUBLIC OFFICE OR EMPLOYMENT  
23 INCLUDING JUSTICES, JUDGES AND [JUSTICES OF THE PEACE]  
24 MAGISTERIAL DISTRICT JUDGES AND MEMBERS OF THE GENERAL ASSEMBLY  
25 OR WHO IS ACTING OR WHO HAS ACTED IN BEHALF OF THE COMMONWEALTH  
26 OR A POLITICAL SUBDIVISION OR ANY AGENCY THEREOF INCLUDING BUT  
27 NOT LIMITED TO ANY PERSON WHO HAS SO ACTED AND IS OTHERWISE  
28 ENTITLED TO OR IS RECEIVING RETIREMENT BENEFITS WHETHER THAT  
29 PERSON IS ACTING ON A PERMANENT OR TEMPORARY BASIS AND WHETHER  
30 OR NOT COMPENSATED ON A FULL OR PART-TIME BASIS. THIS TERM SHALL

1 NOT INCLUDE INDEPENDENT CONTRACTORS NOR THEIR EMPLOYEES OR  
2 AGENTS UNDER CONTRACT TO THE COMMONWEALTH OR POLITICAL  
3 SUBDIVISION NOR SHALL IT APPLY TO ANY PERSON PERFORMING TASKS  
4 OVER WHICH THE COMMONWEALTH OR POLITICAL SUBDIVISION HAS NO  
5 LEGAL RIGHT OF CONTROL. HOWEVER, THIS TERM SHALL INCLUDE ALL  
6 PERSONS WHO ARE MEMBERS OF ANY RETIREMENT SYSTEM FUNDED IN WHOLE  
7 OR IN PART BY THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION. FOR  
8 THE PURPOSES OF THIS ACT SUCH PERSONS ARE DEEMED TO BE ENGAGED  
9 IN PUBLIC EMPLOYMENT.

10 "School employee." As defined in 24 Pa.C.S. § 8102 (relating  
11 to definitions).

12 "Student." An individual who is:

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

17 Section 2. Section 3 of the act is amended to read:

18 Section 3. Disqualification and forfeiture of benefits.

19 (a) Notwithstanding any other provision of law, no public  
20 official or public employee nor any beneficiary designated by  
21 such public official or public employee shall be entitled to  
22 receive any retirement or other benefit or payment of any kind  
23 except a return of the contribution paid into any pension fund  
24 without interest, if such public official or public employee is  
25 **[convicted]** FOUND GUILTY OF A CRIME RELATED TO PUBLIC OFFICE OR <--  
26 PUBLIC EMPLOYMENT or pleads guilty or no [defense] contest to  
27 any crime related to public office or public employment.

28 (b) [The benefits shall be forfeited upon entry of a plea of  
29 guilty or no defense or upon initial conviction and no payment  
30 or partial payment shall be made during the pendency of an

1 appeal. If] The benefits shall be immediately forfeited upon the  
2 public official's or public employee's entry of a plea of guilty  
3 or no contest or upon initial entry of a jury verdict or  
4 judicial order of guilty, with respect to any crimes related to  
5 public office or public employment. The forfeiture shall not be  
6 stayed or affected by pendency of an appeal or collateral attack  
7 on the plea, verdict or order, regardless of whether a court has  
8 entered or stayed the sentence pending the appeal or collateral  
9 attack. If a plea, verdict or order is vacated and a verdict of  
10 not guilty is rendered or the indictment or criminal information  
11 finally dismissed, then the public official or public employee  
12 shall be reinstated as a member of the pension fund or system  
13 and shall be entitled to all benefits including those accruing  
14 during the period of forfeiture if any. Such [conviction or]  
15 plea, verdict or order shall be deemed to be a breach of a  
16 public officer's or public employee's contract with his  
17 employer.

18 (c) Each time a public officer or public employee is  
19 elected, appointed, promoted, or otherwise changes a job  
20 classification, there is a termination and renewal of the  
21 contract for purposes of this act.

22 (d) The appropriate [retirement board] BENEFITS <--  
23 ADMINISTRATOR may retain a member's contributions and interest  
24 thereon for the purpose of paying any fine imposed upon the  
25 member of the fund BY A COURT OF COMPETENT JURISDICTION, or for <--  
26 the repayment of any funds misappropriated by such member from  
27 the Commonwealth or any political subdivision.

28 (e) Notwithstanding any other provision of this act, the  
29 State Employees' Retirement Board shall not disburse any funds  
30 to any person who has forfeited their right to benefits until

1 the Auditor General and the Attorney General have determined and  
2 certified that there has been no loss to the Commonwealth as a  
3 result of the conduct that resulted in forfeiture of benefits.  
4 If there is a loss to the Commonwealth, the board shall pay the  
5 amount of the loss to the State Treasurer from the member's  
6 contributions and the interest thereon.

7 Section 3. Section 4 of the act, repealed in part October 5,  
8 1980 (P.L.693, No.142), is amended to read:

9 Section 4. Restitution for monetary loss.

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

22 (b) If the court fails to order such restitution the  
23 Commonwealth, through the Attorney General, or a political  
24 subdivision shall petition the court pronouncing sentence for an  
25 order establishing the amount of restitution due it. If the  
26 court does not have authority to order restitution, the  
27 Commonwealth or the political subdivision shall bring an  
28 original action for restitution.

29 (c) Notwithstanding any law or provision of law exempting  
30 the pension account or benefits of any public official or public

1 employee from garnishment or attachment, whenever the court  
2 shall order restitution or establish the amount of restitution  
3 due after petition, all sums then credited to the defendant's  
4 account or payable to the defendant including the contributions  
5 shall be available to satisfy such restitution order.

6 (d) [The retirement board, administrator of the pension fund <--  
7 or employer of the defendant] UPON THE FINDING OF GUILTY OF A <--  
8 PUBLIC OFFICIAL OR PUBLIC EMPLOYEE, OR UPON THE ENTRY OF A PLEA  
9 OF GUILTY OR NO CONTEST IN ANY COURT OF RECORD BY A PUBLIC  
10 OFFICIAL OR PUBLIC EMPLOYEE, THE COURT SHALL NOTIFY THE  
11 APPROPRIATE BENEFITS ADMINISTRATOR OF SUCH FINDING OR ENTRANCE  
12 OF PLEA. THE APPROPRIATE BENEFITS ADMINISTRATOR, upon being  
13 served with a copy of the court's order, shall pay over all such  
14 pension benefits, contributions or other benefits to the extent  
15 necessary to satisfy the order of restitution.

16 Section 4. The General Assembly finds and declares as  
17 follows:

18 (1) This section applies to the following provisions:

19 (i) The editorial change in the second paragraph of  
20 the definition of "crimes related to public office or  
21 public employment" in section 2 of the act.

22 (ii) The addition of the definitions of "school  
23 employee" and "student" in section 2 of the act.

24 (2) The provisions referred to in paragraph (1) are  
25 intended to clarify the scope of the act as amended by the  
26 act of July 15, 2004 (P.L.733, No.86), entitled "An act  
27 amending the act of July 8, 1978 (P.L.752, No.140), entitled  
28 'An act providing for the forfeiture of the pensions of  
29 certain public employees and authorizing the State or  
30 political subdivision to garnish the pension benefits of



1 certain public officers and employees upon conviction of  
2 certain criminal activity related to their office or position  
3 of employment,' further defining 'crimes related to public  
4 office or public employment' to include certain sexual  
5 offenses committed by school employees against students."

6 Section 5. Except for the editorial change in the second  
7 paragraph of the definition of "crimes related to public office  
8 or public employment" in section 2 of the act and the addition  
9 of the definitions of "school employee" and "student" to section  
10 2 of the act, the amendment of sections 2, 3 and 4 of the act  
11 shall apply to crimes related to public office or public  
12 employment committed on and after the effective date of this  
13 section.

14 Section 6. This act shall take effect ~~as follows:~~ <--

15 ~~(1) The following provisions shall take effect~~  
16 ~~immediately:~~

17 ~~(i) The editorial change in the second paragraph of~~  
18 ~~the definition of "crimes related to public office or~~  
19 ~~public employment" in section 2 of the act.~~

20 ~~(ii) The addition of the definitions of "school~~  
21 ~~employee" and "student" to section 2 of the act.~~

22 ~~(iii) Section 4 of this act.~~

23 ~~(iv) This section.~~

24 ~~(2) The remainder of this act shall take effect in 60-~~  
25 ~~days~~ IMMEDIATELY. <--