

PUBLIC EMPLOYEE PENSION FORFEITURE ACT
Act of Jul. 8, 1978, P.L. 752, No. 140
AN ACT

Cl. 43

Providing for the forfeiture of the pensions of certain public employees and authorizing the State or political subdivision to garnish the pension benefits of certain public officers and employees upon conviction of certain criminal activity related to their office or position of employment.

Compiler's Note: See section 408 of Act 5 of 2017 in the appendix to this act for special provisions relating to restoration of service credit or retirement benefits.

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

Section 1. Short title.

This act shall be known and may be cited as the "Public Employee Pension Forfeiture Act."

Section 2. Definitions.

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

"Benefits administrator." A retirement board, pension fund administrator or employer that manages, controls or maintains a pension system for public officials or public employees. (Def. added Mar. 28, 2019, P.L.1, No.1)

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

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

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

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

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

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

Section 4101 (relating to forgery).

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

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

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

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

Section 4904 (relating to unsworn falsification to authorities).

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

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

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

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

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

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

Section 5301 (relating to official oppression).

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

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

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

In addition to the foregoing specific crimes, the term also includes all criminal offenses as set forth in Federal law and the laws of another state substantially the same as the crimes enumerated herein. The term also includes felony offenses under 18 U.S.C. §§ 371 (relating to conspiracy to commit offense or to defraud United States) and 1341 (relating to frauds and swindles).

(Def. amended Mar. 28, 2019, P.L.1, No.1)

"Political subdivision." Any county, city, borough, incorporated town, township, school district, vocational school district, intermediate unit, municipal authority, home rule, optional plan or optional charter municipality, and any agencies, boards, commissions, committees, departments, instrumentalities, or entities thereof designated to act in behalf of a political subdivision either by statute or appropriation.

"Public official" or "public employee." Any person who is elected or appointed to any public office or employment including justices, judges and magisterial district judges and members of the General Assembly or who is acting or who has acted in behalf of the Commonwealth or a political subdivision or any agency thereof including but not limited to any person who has so acted and is otherwise entitled to or is receiving retirement benefits whether that person is acting on a permanent or temporary basis and whether or not compensated on a full or part-time basis. This term shall not include independent contractors nor their employees or agents under contract to the Commonwealth or political subdivision nor shall it apply to any person performing tasks over which the Commonwealth or political subdivision has no legal right of control. However, this term shall include all persons who are members of any retirement system funded in whole or in part by the Commonwealth or any political subdivision. For the purposes of this act such persons are deemed to be engaged in public employment. (Def. amended Mar. 28, 2019, P.L.1, No.1)

Section 3. Disqualification and forfeiture of benefits.

(a) Notwithstanding any other provision of law, no public official or public employee nor any beneficiary designated by such public official or public employee shall be entitled to

receive any retirement or other benefit or payment of any kind except a return of the contribution paid into any pension fund without interest, if such public official or public employee is found guilty of a crime related to public office or public employment or pleads guilty or nolo contendere to any crime related to public office or public employment. ((a) amended Mar. 28, 2019, P.L.1, No.1)

(b) The benefits shall be forfeited retroactive to the date of the public official's or public employee's plea of guilty or nolo contendere or upon initial entry of a jury verdict of guilty or judicial order of guilty, with respect to any crimes related to public office or public employment. The forfeiture shall not be stayed or affected by pendency of an appeal or collateral attack on the plea, verdict or order, regardless of whether a court has entered or stayed the sentence pending the appeal or collateral attack. If a plea, verdict or order is vacated and a verdict of not guilty is rendered or the indictment or criminal information finally dismissed, then the public official or public employee shall be reinstated as a member of the pension fund or system and shall be entitled to all benefits including those accruing during the period of forfeiture if any. Such plea, verdict or order shall be deemed to be a breach of a public officer's or public employee's contract with his employer. ((b) amended Mar. 28, 2019, P.L.1, No.1)

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

(d) The appropriate benefits administrator may retain a member's contributions and interest thereon for the purpose of paying any fine imposed upon the member of the fund by a court of competent jurisdiction, or for the repayment of any funds misappropriated by such member from the Commonwealth or any political subdivision. ((d) amended Mar. 28, 2019, P.L.1, No.1)

(e) Notwithstanding any other provision of this act, the State Employees' Retirement Board shall not disburse any funds to any person who has forfeited their right to benefits until the Auditor General and the Attorney General have determined and certified that there has been no loss to the Commonwealth as a result of the conduct that resulted in forfeiture of benefits. If there is a loss to the Commonwealth, the board shall pay the amount of the loss to the State Treasurer from the member's contributions and the interest thereon.

(f) The Administrative Office of Pennsylvania Courts shall provide the State Employees' Retirement System and the Public School Employees' Retirement System the information necessary to fulfill the duties under subsection (b). ((f) added Mar. 28, 2019, P.L.1, No.1)

Section 4. Restitution for monetary loss.

(a) Whenever any public official or public employee who is a member of any pension system funded by public moneys enters a plea of guilty or nolo contendere in any court of record to any crime related to a public office or public employment and which plea is accepted by the court or whenever there is initial entry of a jury verdict of guilty or judicial order of guilty against the public official or public employee in any court of record to any crime related to a public office or public employment, the court shall order the defendant to make complete and full restitution to the Commonwealth or political subdivision of any monetary loss incurred as a result of the criminal offense. ((a) amended Mar. 28, 2019, P.L.1, No.1)

(b) If the court fails to order such restitution the Commonwealth, through the Attorney General, or a political subdivision shall petition the court pronouncing sentence for an order establishing the amount of restitution due it. If the court does not have authority to order restitution, the Commonwealth or the political subdivision shall bring an original action for restitution. ((b) repealed in part Oct. 5, 1980, P.L.693, No.142)

(c) Notwithstanding any law or provision of law exempting the pension account or benefits of any public official or public employee from garnishment or attachment, whenever the court shall order restitution or establish the amount of restitution due after petition, all sums then credited to the defendant's account or payable to the defendant including the contributions shall be available to satisfy such restitution order.

(d) Until restitution is determined by a court, the appropriate benefits administrator shall not make payment of any refund of contributions applied for after the date of such finding or entry to the public official or public employee until the court notifies the appropriate benefits administrator that no restitution is due. The court shall notify the appropriate benefits administrator if restitution is or is not ordered and the amount, if applicable. The appropriate benefits administrator, upon being served with a copy of the court's order, shall pay over all such pension benefits, contributions or other benefits to the extent necessary to satisfy the order of restitution. ((d) amended Mar. 28, 2019, P.L.1, No.1) Section 5. Repealer.

All other acts or parts of acts inconsistent with the provisions of this act are repealed to the extent of their inconsistency.

(5 repealed in part Oct. 5, 1980, P.L.693, No.142) Section 6. Severability.

The provisions of this act shall be severable. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the act are so essentially and inseparable connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 7. Retroactively. (7 repealed Mar. 28, 2019, P.L.1, No.1)

Section 8. Effective date.

This act shall take effect immediately.

APPENDIX

Supplementary Provisions of Amendatory Statutes

Section 408. Nothing in this act shall be deemed to permit the restoration of service credit or retirement benefits that:

(1) were or are subject to section 16 of Article V of the Constitution of Pennsylvania or 42 Pa.C.S. § 3352; or

(2) were or are the subject of an order of forfeiture under the act of July 8, 1978 (P.L.752, No.140), known as the Public Employee Pension Forfeiture Act

Compiler's Note. Act 5 amended or added sections 8102, 8103, 8103.2, 8302, 8303, 8304, 8305, 8305.3, 8305.4, 8305.5, 8306, 8307, 8308, 8310, 8321, 8322.1, 8323, 8324, 8325.1, 8326, 8327, 8328, 8330, 8341, 8342, 8344, 8345, 8346, 8347 and 8349, Chapter 84, and sections 8501, 8502, 8502.2, 8503, 8505, 8506, 8507, 8521, 8522, 8524, 8525, 8531, 8533, 8533.1, 8533.2, 8533.3, 8533.4, 8533.5, 8534, 8535, 8535.1, 8537, 8538, 8702 of Title 24, section 7306 of Title 51 and sections 5102, 5103, 5104, 5301, 5302, 5303, 5303.2, 5304, 5305, 5305.1, 5306, 5306.1, 5306.2, 5306.3, 5306.4, 5306.5, 5307, 5308, 5308.1, 5309, 5310, 5311, 5501.1, 5502, 5503.1, 5504, 5505, 5506.1, 5507, 5508, 5509, 5701, 5701.1, 5702, 5704, 5705, 5705.1, 5706, 5707 and 5709, Chapter 58 and sections 5901, 5902, 5903, 5904, 5905, 5905.1, 5906, 5907, 5931, 5932, 5933, 5934, 5935, 5936, 5937, 5938, 5939, 5951, 5953, 5953.1, 5953.2, 5953.3, 5953.4, 5953.6, 5954, 5955, 5955.2, 5957 and 5958 of Title 71.