

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1567 Session of 2011

INTRODUCED BY BOBACK, TOOHIL, GABLER, LAWRENCE, SCAVELLO, WAGNER, WATSON, CUTLER, PEIFER, MAJOR, GOODMAN, MILNE, HARRIS, SWANGER, TRUITT, TALLMAN, CARROLL, MARSHALL, CREIGHTON, FARRY, ROCK AND RAPP, MAY 23, 2011

SENATOR MCILHINNEY, STATE GOVERNMENT, IN SENATE, AS AMENDED, OCTOBER 15, 2012

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 CLARIFYING THE SCOPE OF THE ACT; AND further providing for
8 definitions, for disqualification and forfeiture of benefits
9 and for restitution.



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

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

1 have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section:

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

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

15 ~~Section 2713 (relating to neglect of care dependent person).~~ ←

16 ~~Section 3124.2 (relating to institutional sexual assault).~~

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 4304 (relating to endangering welfare of children).

8 Section 4701 (relating to bribery in official and political
9 matters).

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

12 Section 4902 (relating to perjury).

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

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

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

18 Section 4909 (relating to witness or informant taking 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 5123 (relating to contraband).~~

30 Section 5301 (relating to official oppression).



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

3 Section 6301 (relating to corruption of minors).

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

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

9 * * *

10 ~~Section 1.1. Section 3 of the act is amended to read:~~ ←

11 ~~Section 3. Disqualification and forfeiture of benefits.~~

12 ~~(a) Notwithstanding any other provision of law, no public~~
13 ~~official or public employee nor any beneficiary designated by~~
14 ~~such public official or public employee shall be entitled to~~
15 ~~receive any retirement or other benefit or payment of any kind~~
16 ~~except a return of the contribution paid into any pension fund~~
17 ~~without interest, if such public official or public employee is~~
18 ~~convicted or pleads guilty or no [defense] contest to any crime~~
19 ~~related to public office or public employment.~~

20 ~~(b) [The benefits shall be forfeited upon entry of a plea of~~
21 ~~guilty or no defense or upon initial conviction and no payment~~
22 ~~or partial payment shall be made during the pendency of an~~
23 ~~appeal. If] The benefits shall be immediately forfeited upon the~~
24 ~~public official's or public employee's entry of a plea of guilty~~
25 ~~or no contest or upon initial entry of a jury verdict or~~
26 ~~judicial order of guilty, with respect to any crimes related to~~
27 ~~public office or public employment. The forfeiture shall not be~~
28 ~~stayed or affected by the withdrawal of, or the court's refusal~~
29 ~~to accept, the plea or by the pendency of an appeal or~~
30 ~~collateral attack on the plea, verdict or order, regardless of~~

1 ~~whether a court has entered or stayed the sentence pending the~~
2 ~~appeal or collateral attack. If a plea, verdict or order is~~
3 ~~vacated and a verdict of not guilty is rendered or the~~
4 ~~indictment or criminal information finally dismissed, then the~~
5 ~~public official or public employee shall be reinstated as a~~
6 ~~member of the pension fund or system and shall be entitled to~~
7 ~~all benefits including those accruing during the period of~~
8 ~~forfeiture if any. Such [conviction or] plea, verdict or order~~
9 ~~shall be deemed to be a breach of a public officer's or public~~
10 ~~employee's contract with his employer.~~

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

15 ~~(d) The appropriate retirement board may retain a member's~~
16 ~~contributions and interest thereon for the purpose of paying any~~
17 ~~fine imposed upon the member of the fund, or for the repayment~~
18 ~~of any funds misappropriated by such member from the~~
19 ~~Commonwealth or any political subdivision.~~

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

29 ~~Section 2. Section 4 of the act, repealed in part October 5,~~
30 ~~1980 (P.L.693, No.142), is amended to read:~~

1 ~~Section 4. Restitution for monetary loss.~~

2 ~~(a) [Whenever] For any public official or employee who is a~~
3 ~~member of any pension system funded by public moneys [is~~
4 ~~convicted or pleads guilty or pleads no defense], whenever the~~
5 ~~public official or employee enters a plea of guilty or no~~
6 ~~contest, in any court of record, to any crime related to a~~
7 ~~public office or public employment or whenever there is initial~~
8 ~~entry of a jury verdict or judicial order of guilty against the~~
9 ~~public official or employee, in any court of record, to any~~
10 ~~crime related to a public office or public employment, the court~~
11 ~~shall order the defendant to make complete and full restitution~~
12 ~~to the Commonwealth or political subdivision of any monetary~~
13 ~~loss incurred as a result of the criminal offense.~~

14 ~~(b) If the court fails to order such restitution the~~
15 ~~Commonwealth, through the Attorney General, or a political~~
16 ~~subdivision shall petition the court pronouncing sentence for an~~
17 ~~order establishing the amount of restitution due it. If the~~
18 ~~court does not have authority to order restitution, the~~
19 ~~Commonwealth or the political subdivision shall bring an~~
20 ~~original action for restitution.~~

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

28 ~~(d) The retirement board, administrator of the pension fund~~
29 ~~or employer of the defendant, upon being served with a copy of~~
30 ~~the court's order, shall pay over all such pension benefits,~~

1 ~~contributions or other benefits to the extent necessary to~~
2 ~~satisfy the order of restitution.~~

3 ~~Section 3. The amendment of sections 3 and 4 and of the act~~
4 ~~shall apply to crimes related to public office or public~~
5 ~~employment committed on and after the effective date of this~~
6 ~~section.~~

7 ~~Section 4. This act shall take effect in 60 days.~~

8 "SCHOOL EMPLOYEE." AS DEFINED IN 24 PA.C.S. § 8102 (RELATING ←
9 TO DEFINITIONS).

10 "STUDENT." A MINOR WHO IS BEING:

11 (1) INSTRUCTED BY A SCHOOL EMPLOYEE;

12 (2) SUPERVISED BY A SCHOOL EMPLOYEE;

13 (3) COUNSELED BY A SCHOOL EMPLOYEE; OR

14 (4) MENTORED BY A SCHOOL EMPLOYEE.

15 SECTION 2. THE GENERAL ASSEMBLY FINDS AND DECLARES AS
16 FOLLOWS:

17 (1) THIS SECTION APPLIES TO THE FOLLOWING PROVISIONS:

18 (I) THE EDITORIAL CHANGE IN THE SECOND PARAGRAPH OF
19 THE DEFINITION OF "CRIMES RELATED TO PUBLIC OFFICE OR
20 PUBLIC EMPLOYMENT" IN SECTION 2 OF THE ACT.

21 (II) THE ADDITION OF THE DEFINITIONS OF "SCHOOL
22 EMPLOYEE" AND "STUDENT" IN SECTION 2 OF THE ACT.

23 (2) THE PROVISIONS REFERRED TO IN PARAGRAPH (1) ARE
24 INTENDED TO CLARIFY THE SCOPE OF THE ACT AS AMENDED BY THE
25 ACT OF JULY 15, 2004 (P.L.733, NO.86), ENTITLED "AN ACT
26 AMENDING THE ACT OF JULY 8, 1978 (P.L.752, NO.140), ENTITLED
27 'AN ACT PROVIDING FOR THE FORFEITURE OF THE PENSIONS OF
28 CERTAIN PUBLIC EMPLOYEES AND AUTHORIZING THE STATE OR
29 POLITICAL SUBDIVISION TO GARNISH THE PENSION BENEFITS OF
30 CERTAIN PUBLIC OFFICERS AND EMPLOYEES UPON CONVICTION OF

1 CERTAIN CRIMINAL ACTIVITY RELATED TO THEIR OFFICE OR POSITION
2 OF EMPLOYMENT,' FURTHER DEFINING 'CRIMES RELATED TO PUBLIC
3 OFFICE OR PUBLIC EMPLOYMENT' TO INCLUDE CERTAIN SEXUAL
4 OFFENSES COMMITTED BY SCHOOL EMPLOYEES AGAINST STUDENTS."

5 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

6 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT
7 IMMEDIATELY:

8 (I) THE EDITORIAL CHANGE IN THE SECOND PARAGRAPH OF
9 THE DEFINITION OF "CRIMES RELATED TO PUBLIC OFFICE OR
10 PUBLIC EMPLOYMENT" IN SECTION 2 OF THE ACT.

11 (II) THE ADDITION OF THE DEFINITIONS OF "SCHOOL
12 EMPLOYEE" AND "STUDENT" TO SECTION 2 OF THE ACT.

13 (III) SECTION 2 OF THIS ACT.

14 (IV) THIS SECTION.

15 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
16 DAYS.