

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 17 Session of 2015

INTRODUCED BY PETRI, BARRAR, BLOOM, CUTLER, DIAMOND, EVERETT, LAWRENCE, MACKENZIE, MALONEY, MARSHALL, MICCARELLI, MURT, SACcone, SIMMONS, STEPHENS, WATSON, FARRY AND SANTARSIERO, FEBRUARY 23, 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 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 amended July 15, 2004 (P.L.733, No.86), are amended and the
17 section is amended by adding a definition to 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 in
15 24 Pa.C.S. § 8102 (relating to definitions) against a student.

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

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

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

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

29 Section 4101 (relating to forgery).

30 Section 4104 (relating to tampering with records or

1 identification).

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

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

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

10 [Section 4902 (relating to perjury).] <--

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

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

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

16 [Section 4909 (relating to witness or informant taking <--
17 bribe).] <--

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

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

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

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

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

28 Section 5301 (relating to official oppression).

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

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

3 Any criminal offense UNDER THE LAWS OF THIS COMMONWEALTH <--
4 classified as a felony or punishable by a term of imprisonment
5 exceeding five years.

6 In addition to the foregoing specific crimes, the term also
7 includes all criminal offenses as set forth in Federal law that
8 are:

9 (1) substantially the same as the crimes enumerated
10 herein[.];

11 (2) classified as a felony; or

12 (3) punishable by a term of imprisonment exceeding five
13 years.

14 * * *

15 "Public official" or "public employee." Any person who is
16 elected or appointed to any public office or employment
17 including justices, judges and [justices of the peace]
18 magisterial district judges and members of the General Assembly
19 or who is acting or who has acted in behalf of the Commonwealth
20 or a political subdivision or any agency thereof including but
21 not limited to any person who has so acted and is otherwise
22 entitled to or is receiving retirement benefits whether that
23 person is acting on a permanent or temporary basis and whether
24 or not compensated on a full or part-time basis. This term shall
25 not include independent contractors nor their employees or
26 agents under contract to the Commonwealth or political
27 subdivision nor shall it apply to any person performing tasks
28 over which the Commonwealth or political subdivision has no
29 legal right of control. However, this term shall include all
30 persons who are members of any retirement system funded in whole

1 or in part by the Commonwealth or any political subdivision. For
2 the purposes of this act such persons are deemed to be engaged
3 in public employment.

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

6 Section 3. Disqualification and forfeiture of benefits.

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

16 (b) [The benefits shall be forfeited upon entry of a plea of
17 guilty or no defense or upon initial conviction and no payment
18 or partial payment shall be made during the pendency of an
19 appeal. If] The benefits shall be immediately forfeited upon the
20 public official's or public employee's entry of a plea of guilty
21 or no contest or upon initial entry of a jury verdict or
22 judicial order of guilty, with respect to any crimes related to
23 public office or public employment. If the public official or <--
24 public employee subsequently withdraws a plea of guilty or no
25 contest prior to being sentenced, or the court refuses to accept
26 the public official's or public employee's plea of guilty or no
27 contest, the forfeiture shall be rescinded and benefits shall be
28 paid to the public official or public employee until such time
29 as a subsequent plea of guilty or no contest is entered or a
30 jury verdict or judicial order of guilty with respect to any

1 ~~crimes related to public office or public employment is~~
2 ~~rendered.~~ THE FORFEITURE SHALL NOT BE STAYED OR AFFECTED BY <--
3 PENDENCY OF AN APPEAL OR COLLATERAL ATTACK ON THE PLEA, VERDICT
4 OR ORDER, REGARDLESS OF WHETHER A COURT HAS ENTERED OR STAYED
5 THE SENTENCE PENDING THE APPEAL OR COLLATERAL ATTACK. If a plea,
6 verdict or order is vacated and a verdict of not guilty is
7 rendered or the indictment or criminal information finally
8 dismissed, then the public official or public employee shall be
9 reinstated as a member of the pension fund or system and shall
10 be entitled to all benefits including those accruing during the
11 period of forfeiture if any. Such [conviction or] plea, verdict
12 or order shall be deemed to be a breach of a public officer's or
13 public employee's contract with his employer.

14 * * *

15 (d) The appropriate [retirement board] BENEFITS <--
16 ADMINISTRATOR may] ~~benefits administrator shall~~ retain a <--
17 member's contributions and interest thereon for the purpose of
18 paying any fine imposed upon the member of the fund by a court
19 of competent jurisdiction, or for the repayment of any funds
20 misappropriated by such member from the Commonwealth or any
21 political subdivision ~~and any restitution ordered to be paid to~~ <--
22 any person or entity by any court of competent jurisdiction.

23 * * *

24 Section 4. Restitution for monetary loss.

25 (a) Whenever any public official or public employee who is a
26 member of any pension system funded by public moneys [is
27 convicted or pleads guilty or pleads no defense] enters a plea
28 of guilty or no contest in any court of record to any crime
29 related to a public office or public employment or whenever
30 there is initial entry of a jury verdict or judicial order of

1 guilty against the public official or public employee in any
2 court of record to any crime related to a public office or
3 public employment, the court shall order the defendant to make
4 complete and full restitution ~~of any monetary loss incurred as a~~ <--
5 ~~result of the criminal offense to any victim, including, but not~~
6 ~~limited to,~~ the Commonwealth or ~~a~~ political subdivision of ~~any~~ <--
7 monetary loss incurred as a result of the criminal offense} ~~the~~ <--
8 Commonwealth.

9 * * *

10 (d) [The retirement board, administrator of the pension fund
11 or employer of the defendant] UPON THE FINDING OF GUILTY OF A <--
12 PUBLIC OFFICIAL OR PUBLIC EMPLOYEE, OR UPON THE ENTRY OF A PLEA
13 OF GUILTY OR NO CONTEST IN ANY COURT OF RECORD BY A PUBLIC
14 OFFICIAL OR PUBLIC EMPLOYEE, THE COURT SHALL NOTIFY THE
15 APPROPRIATE BENEFITS ADMINISTRATOR OF SUCH FINDING OR ENTRANCE
16 OF PLEA. THE APPROPRIATE BENEFITS ADMINISTRATOR, upon being
17 served with a copy of the court's order, shall pay over all such
18 pension benefits, contributions or other benefits to the extent
19 necessary to satisfy the order of restitution.} ~~Upon the finding~~ <--
20 ~~of guilt of a public official or public employee, or upon the~~
21 ~~entry of a plea of guilty or no contest in any court of record~~
22 ~~by a public official or public employee, the court shall notify~~
23 ~~the appropriate benefits administrator of such finding or~~
24 ~~entrance of a plea. Upon being served with a copy of the court's~~
25 ~~notice, the appropriate benefits administrator shall retain all~~
26 ~~contributions and interest standing to the credit of the public~~
27 ~~official or public employee until such time as the appropriate~~
28 ~~benefits administrator receives a copy of a court order which~~
29 ~~orders the defendant to pay any fines or restitution, or both.~~
30 ~~If the defendant is ordered to pay any fines or restitution, or~~

1 ~~both, the appropriate benefits administrator shall pay over to~~
2 ~~the appropriate court all contributions and interest standing to~~
3 ~~the credit of the public official or public employee to the~~
4 ~~extent necessary to satisfy any fines or restitution, or both,~~
5 ~~ordered to be paid by the public official or public employee.~~

6 SECTION 3. SECTION 7 OF THE ACT IS REPEALED: <--

7 [SECTION 7. RETROACTIVELY.

8 THE PROVISIONS OF THIS ACT SHALL BE RETROACTIVE TO DECEMBER
9 1, 1972.]

10 SECTION 4. THE FOLLOWING PROVISIONS APPLY TO CRIMES RELATED
11 TO PUBLIC OFFICE OR PUBLIC EMPLOYMENT COMMITTED ON OR AFTER THE
12 EFFECTIVE DATE OF THIS SECTION:

13 (1) THE AMENDMENT OR ADDITION OF THE DEFINITIONS OF
14 "BENEFITS ADMINISTRATOR," "CRIMES RELATED TO PUBLIC OFFICE OR
15 PUBLIC EMPLOYMENT" AND "PUBLIC OFFICIAL" OR "PUBLIC EMPLOYEE"
16 IN SECTION 2 OF THE ACT.

17 (2) THE AMENDMENT OF SECTION 3(A), (B) AND (D) OF THE
18 ACT.

19 (3) THE AMENDMENT OF SECTION 4(A) AND (D) OF THE ACT.

20 (4) THE REPEAL OF SECTION 7 OF THE ACT.

21 Section 3 5. This act shall take effect immediately. <--