

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 611 Session of 2017

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

AS AMENDED ON SECOND CONSIDERATION, JANUARY 24, 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
21 meanings given to them in this section:

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

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

11 Any of the criminal offenses set forth in Subchapter B of
12 Chapter 31 (relating to definition of offenses) when the
13 criminal offense is committed by a school employee [as defined
14 in 24 Pa.C.S. § 8102 (relating to definitions)] against a
15 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~~ <--
8 ~~substantially the same as the crimes enumerated herein[.]:~~

9 ~~(1) classified as a felony; or~~
10 ~~(2) punishable by a term of imprisonment exceeding five~~
11 ~~years.:~~ <--

12 (1) UNDER 18 U.S.C. §§ 371 (RELATING TO CONSPIRACY TO
13 COMMIT OFFENSE OR TO DEFRAUD UNITED STATES) AND 1341
14 (RELATING TO FRAUDS AND SWINDLES); AND

15 (2) AS SET FORTH IN FEDERAL LAW SUBSTANTIALLY THE SAME
16 AS THE CRIMES ENUMERATED HEREIN[.]:

17 (I) CLASSIFIED AS A FELONY; OR
18 (II) PUNISHABLE BY A TERM OF IMPRISONMENT EXCEEDING
19 FIVE YEARS.

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

19 Section 3. Disqualification and forfeiture of benefits.

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

29 (b) [The benefits shall be forfeited upon entry of a plea of
30 guilty or no defense or upon initial conviction and no payment

1 or partial payment shall be made during the pendency of an
2 appeal. If] The benefits shall be ~~immediately forfeited upon~~ <--
3 FORFEITED RETROACTIVE TO THE DATE OF the public official's or <--
4 public employee's ~~entry of a plea of guilty or no contest or~~ <--
5 upon initial entry of a jury verdict or judicial order of
6 guilty, with respect to any crimes related to public office or
7 public employment. THE SENTENCING COURT SHALL TRANSMIT THE <--
8 NOTICE TO THE APPROPRIATE BENEFITS ADMINISTRATOR WITHIN THREE
9 BUSINESS DAYS AFTER ENTRY OF THE PLEA, VERDICT OR ORDER. The
10 forfeiture shall not be stayed or affected by pendency of an
11 appeal or collateral attack on the plea, verdict or order,
12 regardless of whether a court has entered or stayed the sentence
13 pending the appeal or collateral attack. If a plea, verdict or
14 order is vacated and a verdict of not guilty is rendered or the
15 indictment or criminal information finally dismissed, then the
16 public official or public employee shall be reinstated as a
17 member of the pension fund or system and shall be entitled to
18 all benefits including those accruing during the period of
19 forfeiture if any. Such [conviction or] plea, verdict or order
20 shall be deemed to be a breach of a public officer's or public
21 employee's contract with his employer.

22 * * *

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

29 * * *

30 Section 4. Restitution for monetary loss.

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

13 * * *

14 (d) [The retirement board, administrator of the pension fund
15 or employer of the defendant] Upon the finding of guilty of a
16 public official or public employee, or upon the entry of a plea
17 of guilty or no contest in any court of record by a public
18 official or public employee AND WHICH PLEA IS ACCEPTED BY THE <--
19 COURT, the court shall notify the appropriate benefits
20 administrator of such finding or ~~entrance~~ of plea WITHIN THREE <--
21 BUSINESS DAYS OF THE FINDING OR PLEA. Until restitution is
22 determined by a court, the appropriate benefits administrator
23 shall not make payment of any refund of contributions applied
24 for after the date of such finding or entry to the public
25 official or public employee until the court notifies the
26 appropriate benefits administrator that no restitution is due.
27 THE COURT SHALL NOTIFY THE APPROPRIATE BENEFITS ADMINISTRATOR IF <--
28 RESTITUTION IS OR IS NOT ORDERED AND THE AMOUNT, IF APPLICABLE.
29 The appropriate benefits administrator, upon being served with a
30 copy of the court's order, shall pay over all such pension

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

3 Section 3. Section 7 of the act is repealed:

4 [Section 7. Retroactively.

5 The provisions of this act shall be retroactive to December
6 1, 1972.]

7 Section 4. The following provisions apply to crimes related
8 to public office or public employment committed on or after the
9 effective date of this section:

10 (1) The amendment or addition of the definitions of
11 "benefits administrator," "crimes related to public office or
12 public employment" except for the editorial change in the
13 second paragraph of the definition, and "public official" or
14 "public employee" in section 2 of the act.

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

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

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

19 Section 5. This act shall take effect immediately.