

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 113 Session of
2019

INTRODUCED BY DiSANTO, BROWNE, MENSCH, ALLOWAY, AUMENT, FOLMER,
LANGERHOLC, MARTIN, PHILLIPS-HILL, REGAN, STEFANO, VOGEL,
J. WARD, WHITE AND BAKER, JANUARY 23, 2019

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 12, 2019

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 A <--
17 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 and
8 the laws of another state substantially the same as the crimes
9 enumerated herein. The term also includes felony offenses under
10 18 U.S.C. §§ 371 (relating to conspiracy to commit offense or to
11 defraud United States) and 1341 (relating to frauds and
12 swindles).

13 * * *

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

1 the purposes of this act such persons are deemed to be engaged
2 in public employment.

3 Section 2. Section 3(a), (b) and (d) of the act are amended
4 and the section is amended by adding a subsection to read:

5 Section 3. Disqualification and forfeiture of benefits.

6 (a) Notwithstanding any other provision of law, no public
7 official or public employee nor any beneficiary designated by
8 such public official or public employee shall be entitled to
9 receive any retirement or other benefit or payment of any kind
10 except a return of the contribution paid into any pension fund
11 without interest, if such public official or public employee is
12 ~~[convicted]~~ found guilty of a crime related to public office or
13 public employment or pleads guilty or ~~[no defense]~~ ~~contest~~ NOLO <--
14 CONTENDERE to any crime related to public office or public
15 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 forfeited retroactive to the
20 date of the public official's or public employee's plea of
21 guilty or ~~no contest~~ NOLO CONTENDERE or upon initial entry of a <--
22 jury verdict OF GUILTY or judicial order of guilty, with respect <--
23 to any crimes related to public office or public employment. The
24 forfeiture shall not be stayed or affected by pendency of an
25 appeal or collateral attack on the plea, verdict or order,
26 regardless of whether a court has entered or stayed the sentence
27 pending the appeal or collateral attack. If a plea, verdict or
28 order is vacated and a verdict of not guilty is rendered or the
29 indictment or criminal information finally dismissed, then the
30 public official or public employee shall be reinstated as a

1 member of the pension fund or system and shall be entitled to
2 all benefits including those accruing during the period of
3 forfeiture if any. Such [conviction or] plea, verdict or order
4 shall be deemed to be a breach of a public officer's or public
5 employee's contract with his employer.

6 * * *

7 (d) The appropriate [retirement board] benefits
8 administrator may retain a member's contributions and interest
9 thereon for the purpose of paying any fine imposed upon the
10 member of the fund by a court of competent jurisdiction, or for
11 the repayment of any funds misappropriated by such member from
12 the Commonwealth or any political subdivision.

13 * * *

14 (f) The Administrative Office of Pennsylvania Courts shall
15 provide the State Employees' Retirement System and the Public
16 School Employees' Retirement System the information necessary to
17 fulfill the duties under subsection (b).

18 Section 3. Section 4(a) and (d) of the act are amended to
19 read:

20 Section 4. Restitution for monetary loss.

21 (a) Whenever any public official or public employee who is a
22 member of any pension system funded by public moneys [is
23 convicted or pleads guilty or pleads no defense] enters a plea
24 of guilty or ~~no contest~~ NOLO CONTENDERE in any court of record <--
25 to any crime related to a public office or public employment and
26 which plea is accepted by the court or whenever there is initial
27 entry of a jury verdict OF GUILTY or judicial order of guilty <--
28 against the public official or public employee in any court of
29 record to any crime related to a public office or public
30 employment, the court shall order the defendant to make complete

1 and full restitution to the Commonwealth or political
2 subdivision of any monetary loss incurred as a result of the
3 criminal offense.

4 * * *

5 (d) [The retirement board, administrator of the pension fund
6 or employer of the defendant] Until restitution is determined by
7 a court, the appropriate benefits administrator shall not make
8 payment of any refund of contributions applied for after the
9 date of such finding or entry to the public official or public
10 employee until the court notifies the appropriate benefits
11 administrator that no restitution is due. The court shall notify
12 the appropriate benefits administrator if restitution is or is
13 not ordered and the amount, if applicable. The appropriate
14 benefits administrator, upon being served with a copy of the
15 court's order, shall pay over all such pension benefits,
16 contributions or other benefits to the extent necessary to
17 satisfy the order of restitution.

18 Section 4. Section 7 of the act is repealed:

19 [Section 7. Retroactively.

20 The provisions of this act shall be retroactive to December
21 1, 1972.]

22 Section 5. The following provisions apply to crimes related
23 to public office or public employment committed on or after the
24 effective date of this section:

25 (1) The amendment or addition of the definitions of
26 "benefits administrator," "crimes related to public office or
27 public employment," and "public official" or "public
28 employee" in section 2 of the act.

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

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

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

3 Section 6. This act shall take effect as follows:

4 (1) The addition of section 3(f) of the act shall take
5 effect in 60 days.

6 (2) The remainder of this act shall take effect
7 immediately.