

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1545 Session of 2013

INTRODUCED BY BOBACK, SACCONI, STERN, WATSON, JAMES, MAJOR, KORTZ, MACKENZIE, GROVE, MULLERY, BARRAR, SWANGER, MILNE, BENNINGHOFF, TOEPEL, LAWRENCE, GOODMAN, GILLEN, MURT, MOUL AND DEASY, JUNE 18, 2013

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 25, 2013

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.

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

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

17 Section 2. Definitions.

18 The following words and phrases when used in this act shall
19 have, unless the context clearly indicates otherwise, the

1 meanings given to them in this section:

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

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

14 Section 2713 (relating to neglect of care-dependent person).

15 Section 3124.2 (relating to institutional sexual assault).

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 4304 (relating to endangering welfare of children).

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

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

11 Section 4902 (relating to perjury).

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

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

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

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

29 Section 5301 (relating to official oppression).

30 Section 5302 (relating to speculating or wagering on official

1 action or information).

2 Section 6301 (relating to corruption of minors).

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

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

8 * * *

9 "School employee." As defined in 24 Pa.C.S. § 8102 (relating
10 to definitions).

11 "Student." An individual under 18 years of age who is: <--

12 (1) instructed by a school employee;

13 (2) supervised by a school employee;

14 (3) counseled by a school employee; or

15 (4) mentored by a school employee.

16 Section 2. Section 3 of the act is amended to read:

17 Section 3. Disqualification and forfeiture of benefits.

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

26 (b) [The benefits shall be forfeited upon entry of a plea of
27 guilty or no defense or upon initial conviction and no payment
28 or partial payment shall be made during the pendency of an
29 appeal. If] The benefits shall be immediately forfeited upon the
30 public official's or public employee's entry of a plea of guilty

1 or no contest or upon initial entry of a jury verdict or
2 judicial order of guilty, with respect to any crimes related to
3 public office or public employment. The forfeiture shall not be
4 stayed or affected by the withdrawal of, or the court's refusal
5 to accept, the plea or by the pendency of an appeal or
6 collateral attack on the plea, verdict or order, regardless of
7 whether a court has entered or stayed the sentence pending the
8 appeal or collateral attack. If a plea, verdict or order is
9 vacated and a verdict of not guilty is rendered or the
10 indictment or criminal information finally dismissed, then the
11 public official or public employee shall be reinstated as a
12 member of the pension fund or system and shall be entitled to
13 all benefits including those accruing during the period of
14 forfeiture if any. Such [conviction or] plea, verdict or order
15 shall be deemed to be a breach of a public officer's or public
16 employee's contract with his employer.

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

21 (d) The appropriate retirement board may retain a member's
22 contributions and interest thereon for the purpose of paying any
23 fine imposed upon the member of the fund, or for the repayment
24 of any funds misappropriated by such member from the
25 Commonwealth or any political subdivision.

26 (e) Notwithstanding any other provision of this act, the
27 State Employees' Retirement Board shall not disburse any funds
28 to any person who has forfeited their right to benefits until
29 the Auditor General and the Attorney General have determined and
30 certified that there has been no loss to the Commonwealth as a

1 result of the conduct that resulted in forfeiture of benefits.
2 If there is a loss to the Commonwealth, the board shall pay the
3 amount of the loss to the State Treasurer from the member's
4 contributions and the interest thereon.

5 Section 3. Section 4 of the act, repealed in part October 5,
6 1980 (P.L.693, No.142), is amended to read:

7 Section 4. Restitution for monetary loss.

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

20 (b) If the court fails to order such restitution the
21 Commonwealth, through the Attorney General, or a political
22 subdivision shall petition the court pronouncing sentence for an
23 order establishing the amount of restitution due it. If the
24 court does not have authority to order restitution, the
25 Commonwealth or the political subdivision shall bring an
26 original action for restitution.

27 (c) Notwithstanding any law or provision of law exempting
28 the pension account or benefits of any public official or public
29 employee from garnishment or attachment, whenever the court
30 shall order restitution or establish the amount of restitution

1 due after petition, all sums then credited to the defendant's
2 account or payable to the defendant including the contributions
3 shall be available to satisfy such restitution order.

4 (d) The retirement board, administrator of the pension fund
5 or employer of the defendant, upon being served with a copy of
6 the court's order, shall pay over all such pension benefits,
7 contributions or other benefits to the extent necessary to
8 satisfy the order of restitution.

9 Section 4. The General Assembly finds and declares as
10 follows:

11 (1) This section applies to the following provisions:

12 (i) The editorial change in the second paragraph of
13 the definition of "crimes related to public office or
14 public employment" in section 2 of the act.

15 (ii) The addition of the definitions of "school
16 employee" and "student" in section 2 of the act.

17 (2) The provisions referred to in paragraph (1) are
18 intended to clarify the scope of the act as amended by the
19 act of July 15, 2004 (P.L.733, No.86), entitled "An act
20 amending the act of July 8, 1978 (P.L.752, No.140), entitled
21 'An act providing for the forfeiture of the pensions of
22 certain public employees and authorizing the State or
23 political subdivision to garnish the pension benefits of
24 certain public officers and employees upon conviction of
25 certain criminal activity related to their office or position
26 of employment,' further defining 'crimes related to public
27 office or public employment' to include certain sexual
28 offenses committed by school employees against students."

29 Section 5. Except for the editorial change in the second
30 paragraph of the definition of "crimes related to public office

1 or public employment" in section 2 of the act and the addition
2 of the definitions of "school employee" and "student" to section
3 2 of the act, the amendment of sections 2, 3 and 4 and of the
4 act 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 6. This act shall take effect as follows:

8 (1) The following provisions shall take effect
9 immediately:

10 (i) The editorial change in the second paragraph of
11 the definition of "crimes related to public office or
12 public employment" in section 2 of the act.

13 (ii) The addition of the definitions of "school
14 employee" and "student" to section 2 of the act.

15 (iii) Section 4 of this act.

16 (iv) This section.

17 (2) The remainder of this act shall take effect in 60
18 days.