

HOUSE BILL 360

G2

CONSTITUTIONAL AMENDMENT

0lr0186
CF SB 283

By: **The Speaker (By Request – Administration) and Delegates Adams, Anderton, Arentz, Arikan, Beitzel, Buckel, Chisholm, Ciliberti, Clark, Corderman, Cox, M. Fisher, Ghrist, Grammer, Griffith, Hartman, Howard, Jacobs, Kipke, Kittleman, Krebs, Long, Malone, Mangione, Mautz, McComas, McKay, Metzgar, Morgan, Otto, Pippy, Reilly, Rose, Saab, Shoemaker, Szeliga, and Wivell**

Introduced and read first time: January 20, 2020

Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Ethics and Accountability in Government Act**

3 FOR the purpose of proposing an amendment to the Maryland Constitution to authorize
4 the enactment of a law that provides for the forfeiture of certain retirement benefits
5 for members or former members of the General Assembly who are found guilty of a
6 certain crime while in public office; submitting this amendment to the qualified
7 voters of the State for their adoption or rejection; expanding the definition of the
8 term “qualifying crime” to include a certain misdemeanor that is a crime of moral
9 turpitude; requiring that certain benefits from the State Retirement and Pension
10 System of a member of the General Assembly or a certain State employee be forfeited
11 if the individual is found guilty of a qualifying crime; repealing certain provisions
12 that authorize a certain forfeiture to be made in whole or in part; increasing certain
13 penalties for bribery; authorizing the State Ethics Commission to impose a certain
14 fine on a certain person for a violation of the Maryland Public Ethics Law;
15 prohibiting a former official or State employee from disclosing or using confidential
16 information acquired by reason of the individual’s former public position and not
17 available to the public for the economic benefit of the individual or another person;
18 providing for the application of this Act; providing for the effective dates of this Act;
19 and generally relating to ethics law violations and bribery.

20 BY proposing an amendment to the Maryland Constitution
21 Article III – Legislative Department
22 Section 15

23 BY repealing and reenacting, with amendments,
24 Article – State Personnel and Pensions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 21–701, 21–702, 21–703, 21–704, and 21–707(a)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 9–201
Annotated Code of Maryland
(2012 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – General Provisions
Section 5–101(a) and (ii)
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – General Provisions
Section 5–405 and 5–507
Annotated Code of Maryland
(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
(Three–fifths of all the members elected to each of the two Houses concurring), That it be
proposed that the Maryland Constitution read as follows:

Article III – Legislative Department

15.

(1) The General Assembly may continue its session so long as in its judgment the public interest may require, for a period not longer than ninety days in each year. The ninety days shall be consecutive unless otherwise provided by law. The General Assembly may extend its session beyond ninety days, but not exceeding an additional thirty days, by resolution concurred in by a three–fifths vote of the membership in each House. When the General Assembly is convened by Proclamation of the Governor, the session shall not continue longer than thirty days, but no additional compensation other than mileage and other allowances provided by law shall be paid members of the General Assembly for special session.

(2) (I) [Any] SUBJECT TO PARAGRAPH (II) OF THIS SUBSECTION, compensation and allowances paid to members of the General Assembly shall be as established by a commission known as the General Assembly Compensation Commission. The Commission shall consist of nine members, five of whom shall be appointed by the Governor, two of whom shall be appointed by the President of the Senate, and two of whom shall be appointed by the Speaker of the House of Delegates. Members of the General Assembly and officers and employees of the Government of the State of Maryland or of any

1 county, city, or other governmental unit of the State shall not be eligible for appointment
2 to the Commission. Members of the Commission shall be appointed for terms of four years
3 commencing on June 1 of each gubernatorial election year. Members of the Commission are
4 eligible for re-appointment. Any member of the Commission may be removed by the
5 Governor prior to the expiration of his term for official misconduct, incompetence, or neglect
6 of duty. The members shall serve without compensation but shall be reimbursed for
7 expenses incurred in carrying out their responsibilities under this section. Decisions of the
8 Commission must be concurred in by at least five members.

9 **(II) A LAW MAY BE ENACTED THAT PROVIDES FOR THE FORFEITURE**
10 **OF LEGISLATIVE RETIREMENT BENEFITS OF ANY MEMBER OR FORMER MEMBER OF**
11 **THE GENERAL ASSEMBLY WHO IS FOUND GUILTY OF A CRIME COMMITTED WHILE IN**
12 **OFFICE, SUBJECT TO ANY RESTRICTIONS AND EXCEPTIONS PROVIDED IN THE LAW.**

13 (3) Within 15 days after the beginning of the regular session of the General
14 Assembly in 1974 and within 15 days after the beginning of the regular session in each
15 fourth year thereafter, the Commission by formal resolution shall submit its
16 determinations for compensation and allowances to the General Assembly. The General
17 Assembly may reduce or reject, but shall not increase any item in the resolution. The
18 resolution, with any reductions that shall have been concurred in by joint resolution of the
19 General Assembly, shall take effect and have the force of law as of the beginning of the
20 term of office of the next General Assembly. Rates of compensation and pensions shall be
21 uniform for all members of the General Assembly, except that the officers of the Senate and
22 the House of Delegates may receive higher compensation as determined by the General
23 Assembly Compensation Commission. The provisions of the Compensation Commission
24 resolution shall continue in force until superseded by any succeeding resolution.

25 (4) In no event shall the compensation and allowances be less than they were
26 prior to the establishment of the Compensation Commission.

27 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
28 as follows:

29 **Article – State Personnel and Pensions**

30 21–701.

31 (a) In this subtitle the following words have the meanings indicated.

32 (b) “Domestic relations order” means an order issued in accordance with §
33 21–502(a)(2) of this title, § 414(p) of the Internal Revenue Code, and regulations adopted
34 by the Board of Trustees that assigns a benefit to a spouse, former spouse, child, or other
35 dependent of a public employee in connection with a decree or order of alimony, child
36 support, or divorce.

37 (c) “Final adjudication” means adjudication by a trial court resulting in final
38 disposition of all charges that constitute a qualifying crime.

(d) “Public employee” means an individual who:

(1) is employed in a position listed in § 21–702 of this subtitle; and

(2) has been charged with a qualifying crime.

(e) “Qualifying crime” means:

(1) a felony; **OR**

(2) **A MISDEMEANOR:**

[(1)] (I) that is committed in the course of a public employee’s duties and responsibilities;

[(2)] (II) that is committed through the use of the public employee’s authority derived from the position of employment; and

[(3) the commission of which results in, or is attempted to result in, gain, profit, or advantage for the public employee.]

(III) IS A CRIME OF MORAL TURPITUDE FOR WHICH THE PENALTY MAY BE INCARCERATION IN A PENAL INSTITUTION.

21–702.

(a) This subtitle applies to an individual who:

(1) is a member, former member, or retiree of the Employees’ Retirement System [or], the Employees’ Pension System, **OR THE LEGISLATIVE PENSION PLAN**; and

(2) has earned creditable service while employed as:

(i) the Attorney General of the State;

(ii) the Comptroller of the State;

(iii) the Governor of the State;

(iv) the Lieutenant Governor of the State;

(v) the Secretary of State; [or]

(vi) the Treasurer of the State;

1 (VII) A MEMBER OF THE GENERAL ASSEMBLY; OR

2 (VIII) A STATE EMPLOYEE WHO RECEIVED COMPENSATION AT A
3 RATE EQUIVALENT TO AT LEAST STATE GRADE LEVEL 16 AND WAS DESIGNATED A
4 PUBLIC OFFICIAL UNDER THE MARYLAND PUBLIC ETHICS LAW.

5 (b) (1) [This] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
6 SUBSECTION, THIS subtitle does not apply to any service earned before January 9, 2019.

7 (2) (I) FOR A MEMBER OF THE GENERAL ASSEMBLY, THIS
8 SUBTITLE APPLIES TO ALL SERVICE EARNED AS A MEMBER OF THE GENERAL
9 ASSEMBLY.

10 (II) FOR A STATE EMPLOYEE DESCRIBED IN SUBSECTION
11 (A)(2)(VIII) OF THIS SECTION, THIS SUBTITLE DOES NOT APPLY TO ANY SERVICE
12 EARNED BEFORE OCTOBER 1, 2020.

13 21-703.

14 (a) Benefits under this Division II of this article payable to a public employee are
15 subject to forfeiture [in whole or in part] in accordance with this subtitle if the public
16 employee is found guilty of, pleads guilty to, or enters a plea of nolo contendere to a
17 qualifying crime.

18 (b) (1) Benefits under this Division II may not be forfeited [or reduced] if the
19 Internal Revenue Service determines that the forfeiture [or reduction] will negatively
20 affect or invalidate the tax qualified status of any of the several systems.

21 (2) If the Internal Revenue Service determines that the application of this
22 subtitle would negatively affect or invalidate the tax qualified status of any of the several
23 systems, any forfeiture of benefits that took place before the Internal Revenue Service's
24 determination shall be reversed in accordance with § 21-707 of this subtitle to the extent
25 necessary to comply with the determination.

26 21-704.

27 (a) If the final adjudication of charges results in conviction of a public employee,
28 the public employee's retirement allowance shall be forfeited [in whole or in part] in
29 accordance with this section.

30 (b) (1) On conviction of a public employee, the Attorney General or State's
31 Attorney shall file a complaint in circuit court to forfeit the public employee's benefits [in
32 whole or in part].

33 (2) Notice of the complaint filed under paragraph (1) of this subsection

shall be served on:

- (i) the public employee;
- (ii) [any known spouse of the public employee;
- (iii) any known dependents of the public employee;
- (iv) the public employee's designated beneficiaries;
- (v)] any former spouse who has been assigned benefits under an existing domestic relations order; and
- [(vi)] **(III)** the State Retirement Agency.

(3) Notwithstanding § 4–312 of the General Provisions Article, on written request, the State Retirement Agency shall provide the Attorney General or State's Attorney with available information from the retirement records of the public employee to assist the Attorney General or State's Attorney in providing the notice required under this subsection.

(c) The court shall enter an order requiring the forfeiture[, in whole or in part,] of the public employee's benefits if the court finds by clear and convincing evidence that:

- (1) the public employee was convicted of a qualifying crime;
- (2) the public employee was a member of the Employees' Pension System [or], the Employees' Retirement System, **OR THE LEGISLATIVE PENSION PLAN**; and
- (3) the qualifying crime for which the public employee was convicted was committed while the public employee was an active member of the Employees' Pension System [or], the Employees' Retirement System, **OR THE LEGISLATIVE PENSION PLAN**.

(d) Only service credit in the State system in which the public employee is a member when the qualifying crime is committed is eligible for forfeiture under this section.

(e) [(1) An order requiring forfeiture of benefits shall indicate the amount of benefits to be forfeited.

(2) When determining the amount of benefits to be forfeited, the court shall consider:

- (i) the severity of the crime;
- (ii) the amount of monetary loss suffered by the State, a county, a political subdivision, or a person as a result of the crime;

(iii) the degree of public trust placed in the public employee;

(iv) the financial needs and resources of the public employee;

(v) the financial needs and resources of the public employee's spouse, children, or other dependents;

(vi) any interest in benefits of a former spouse established under an existing domestic relations order; and

(vii) any other factors the court determines relevant.

(f) (1) If the court enters an order requiring the forfeiture of benefits, the court may enter a domestic relations order that provides that some or all of the forfeited benefits be paid to a spouse, former spouse, child, or other dependent for purposes of child support, alimony, or marital property rights.

(2) When determining whether to enter a domestic relations order under paragraph (1) of this subsection, the court shall consider whether the public employee's spouse, former spouse, children, or dependents were culpable or complicit in the commission of the qualifying crime.

(3) The court may not order benefits to be paid to a public employee's spouse, former spouse, child, or other dependent in a manner that is inconsistent with the payment of benefits in the State system in which the public employee was a member.

(g)] (1) An order requiring a forfeiture of benefits issued under this section may not impair or alter an existing domestic relations order providing benefits to a former spouse of a public employee.

(2) A public employee's interest in a benefit of a former spouse established by a domestic relations order may not be subject to a forfeiture [or reduction] under this subtitle.

[(h)] (F) Benefits available to a public employee as a beneficiary may not be subject to a forfeiture under this subtitle.

21-707.

(a) [(1)] On receipt of an order that reverses or overturns a conviction of a public employee, the court that issued a forfeiture order under § 21-704 of this subtitle shall rescind the forfeiture order and order the Board of Trustees to pay any benefits that are payable under this Division II of this article to the public employee.

[(2)] When a court rescinds a forfeiture order under paragraph (1) of this subsection, the court shall also rescind any domestic relations order entered in accordance

with § 21–704(f) of this subtitle.]

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Law

9–201.

(a) (1) In this section the following words have the meanings indicated.

(2) “Political subdivision” includes a:

(i) county;

(ii) municipal corporation;

(iii) bi–county or multicounty agency;

(iv) county board of education;

(v) public authority; or

(vi) special taxing district that is not a homeowner’s association.

(3) (i) “Public employee” means an officer or employee of:

1. the State; or

2. a political subdivision of the State.

(ii) “Public employee” includes:

1. an executive officer of the State;

2. a judge of the State;

3. a judicial officer of the State;

4. a member or officer of the General Assembly;

5. a member of the police force of Baltimore City or the Department of State Police; and

6. a member, officer, or executive officer of a political subdivision.

(b) A person may not bribe or attempt to bribe a public employee to influence the public employee in the performance of an official duty of the public employee.

(c) A public employee may not demand or receive a bribe, fee, reward, or testimonial to:

(1) influence the performance of the official duties of the public employee; or

(2) neglect or fail to perform the official duties of the public employee.

(d) A person who violates this section is guilty of the misdemeanor of bribery and on conviction:

(1) is subject to imprisonment for not less than 2 years and not exceeding 12 years or a fine not less than ~~[\$1,000]~~ **\$10,000** and not exceeding ~~[\$10,000]~~ **\$100,000** or both;

(2) may not vote; and

(3) may not hold an office of trust or profit in the State.

(e) A person who violates this section is subject to § 5–106(b) of the Courts Article.

(f) (1) A person who violates this section:

(i) is a competent witness; and

(ii) subject to paragraph (2) of this subsection, may be compelled to testify against any person who may have violated this section.

(2) A person compelled to testify for the State under paragraph (1) of this subsection is immune from prosecution for a crime about which the person was compelled to testify.

Article – General Provisions

5–101.

(a) In this title the following words have the meaning indicated unless:

(1) the context clearly requires a different meaning; or

(2) a different definition is adopted for a particular provision.

(ii) “Respondent” means any of the following that is the subject of a complaint before the Ethics Commission:

- (1) an official;
- (2) an employee;
- (3) a candidate for office as a State official;
- (4) an entity subject to Subtitle 7 of this title; or
- (5) an entity subject to § 5–512 of this title.

5–405.

(a) After the Ethics Commission considers all of the evidence presented at the hearing, the Ethics Commission shall make findings of fact and conclusions of law with respect to each alleged violation.

(b) If the Ethics Commission determines that the respondent has not violated this title, the Ethics Commission shall:

- (1) dismiss the complaint in a signed order; and
- (2) promptly send a copy of the order to the complainant and the respondent.

(c) If the Ethics Commission determines that the respondent has violated any provision of this title, the Ethics Commission may:

- (1) issue an order of compliance directing the respondent to cease and desist from the violation;
- (2) issue a reprimand; [or]
- (3) recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal, if that discipline is authorized by law; **OR**

(4) IMPOSE A FINE NOT EXCEEDING \$5,000 FOR EACH VIOLATION.

(d) If the Ethics Commission determines that a respondent has violated Subtitle 7 of this title, the Ethics Commission may:

- (1) require a respondent who is a regulated lobbyist to file any additional reports or information that reasonably relates to information required under §§ 5–703 and 5–704 of this title; **OR**
- (2) [impose a fine not exceeding \$5,000 for each violation; or

(3)] subject to subsection (e) of this section, suspend the registration of a regulated lobbyist.

(e) (1) If the Ethics Commission determines it necessary to protect the public interest and the integrity of the governmental process, the Ethics Commission may issue an order to:

(i) suspend the registration of an individual regulated lobbyist if the Ethics Commission determines that the individual regulated lobbyist:

1. has knowingly and willfully violated Subtitle 7 of this title;
or

2. has been convicted of a criminal offense arising from lobbying activities; or

(ii) revoke the registration of an individual regulated lobbyist if the Ethics Commission determines that, based on acts arising from lobbying activities, the individual regulated lobbyist has been convicted of bribery, theft, or other crime involving moral turpitude.

(2) If the Ethics Commission suspends the registration of an individual regulated lobbyist under paragraph (1) of this subsection, the individual regulated lobbyist may not engage in lobbying for compensation for a period, not to exceed 3 years, that the Ethics Commission determines as to that individual regulated lobbyist is necessary to satisfy the purposes of this subsection.

(3) If the Ethics Commission revokes the registration of an individual regulated lobbyist under paragraph (1) of this subsection, the individual regulated lobbyist may not engage in lobbying for compensation.

(4) If the Ethics Commission initiates a complaint based on a violation or conviction described in paragraph (1) of this subsection, the Ethics Commission shall initiate the complaint within 2 years after the earlier of:

(i) the Ethics Commission's knowledge of the violation; or

(ii) the date the conviction becomes final.

(5) The termination or expiration of the registration of an individual regulated lobbyist does not limit the authority of the Ethics Commission to issue an order under this subsection.

(f) (1) An individual whose registration as an individual regulated lobbyist is revoked or suspended under subsection (e) of this section may apply to the Ethics Commission for reinstatement.

(2) The Ethics Commission may reinstate the registration of an individual whose registration as a regulated lobbyist has been revoked or suspended under subsection (e) of this section if the Ethics Commission determines that reinstatement of the individual would not be detrimental to the public interest and the integrity of the governmental process, based on:

(i) the nature and circumstances of the original misconduct or violation leading to revocation or suspension;

(ii) the individual's subsequent conduct and reformation; and

(iii) the present ability of the individual to comply with the ethics law.

(g) (1) If the respondent is a regulated lobbyist, for each report required under Subtitle 7 of this title that is filed late, the respondent shall pay a fee of \$10 for each late day, not to exceed a total of \$1,000.

(2) If the respondent is an official, for each financial disclosure statement found to have been filed late, the respondent shall pay a fee of \$5 for each late day, not to exceed a total of \$500.

(h) A penalty, fine, or fee assessed under this section shall be distributed to the Fair Campaign Financing Fund established under § 15–103 of the Election Law Article.

5–507.

Except in the discharge of an official duty, an official or employee **OR A FORMER OFFICIAL OR EMPLOYEE** may not disclose or use confidential information acquired by reason of the [official's or employee's] **INDIVIDUAL'S** public position **OR FORMER PUBLIC POSITION** and not available to the public:

(1) for personal economic benefit; or

(2) for the economic benefit of another.

SECTION 4. AND BE IT FURTHER ENACTED, That the General Assembly determines that the amendment to the Maryland Constitution proposed by Section 1 of this Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland Constitution concerning local approval of constitutional amendments do not apply.

SECTION 5. AND BE IT FURTHER ENACTED, That the amendment to the Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified voters of the State at the next general election to be held in November 2020 for adoption or rejection pursuant to Article XIV of the Maryland Constitution. At that general election, the vote on the proposed amendment to the Constitution shall be by ballot, and on each ballot there shall be printed the words "For the Constitutional Amendment" and "Against

1 the Constitutional Amendment”, as now provided by law. Immediately after the election,
2 all returns shall be made to the Governor of the vote for and against the proposed
3 amendment, as directed by Article XIV of the Maryland Constitution, and further
4 proceedings had in accordance with Article XIV.

5 SECTION 6. AND BE IT FURTHER ENACTED, That:

6 (1) except as provided in paragraph (2) of this section, this Act shall be
7 construed to apply only prospectively and may not be applied or interpreted to have any
8 effect on or application to any acts committed before the effective date of this Act; and

9 (2) Section 2 of this Act shall apply retroactively as well as prospectively to
10 members of the General Assembly.

11 SECTION 7. AND BE IT FURTHER ENACTED, That Section 2 of this Act is
12 contingent on the passage of Section 1 of this Act, a constitutional amendment, and its
13 ratification by the voters of the State.

14 SECTION 8. AND BE IT FURTHER ENACTED, That, subject to the provisions of
15 Section 7 of this Act, Section 2 of this Act shall take effect on the proclamation of the
16 Governor that the constitutional amendment proposed by Section 1 of this Act, having
17 received a majority of the votes cast at the general election, has been adopted by the people
18 of Maryland.

19 SECTION 9. AND BE IT FURTHER ENACTED, That, subject to the provisions of
20 Sections 5 and 8 of this Act, this Act shall take effect October 1, 2020.