

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 939 Session of
2017

INTRODUCED BY FARRY, BAKER, BARRAR, CORBIN, DEAN, DIAMOND,
DUNBAR, FEE, GROVE, PHILLIPS-HILL, IRVIN, LAWRENCE,
B. MILLER, MOUL, NEILSON, PEIFER, M. QUINN, ROTHMAN, SANKEY,
SCHLOSSBERG, SIMMONS, STAATS, TOEPEL, WARD, WATSON, DELOZIER,
MACKENZIE AND BOBACK, MARCH 23, 2017

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 19, 2017

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

1 have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section:

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

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

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

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

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

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

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

1 Section 4101 (relating to forgery).

2 Section 4104 (relating to tampering with records or
3 identification).

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

8 [Section 4701 (relating to bribery in official and political
9 matters).]

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

12 [Section 4902 (relating to perjury).]

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

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

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

18 [Section 4909 (relating to witness or informant taking
19 bribe).]

20 Section 4910 (relating to tampering with or fabricating
21 physical evidence).

22 Section 4911 (relating to tampering with public records or
23 information).

24 Section 4952 (relating to intimidation of witnesses or
25 victims).

26 Section 4953 (relating to retaliation against witness, victim
27 or party).

28 Section 5101 (relating to obstructing administration of law
29 or other governmental function).

30 Section 5301 (relating to official oppression).

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

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

Any criminal offense under the laws of this Commonwealth classified as a felony or punishable by a term of imprisonment exceeding five years.

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

(1) classified as a felony; or

(2) punishable by a term of imprisonment exceeding five years.

* * *

"Public official" or "public employee." Any person who is elected or appointed to any public office or employment including justices, judges and [justices of the peace] magisterial district judges and members of the General Assembly or who is acting or who has acted in behalf of the Commonwealth or a political subdivision or any agency thereof including but not limited to any person who has so acted and is otherwise entitled to or is receiving retirement benefits whether that person is acting on a permanent or temporary basis and whether or not compensated on a full or part-time basis. This term shall not include independent contractors nor their employees or agents under contract to the Commonwealth or political subdivision nor shall it apply to any person performing tasks over which the Commonwealth or political subdivision has no legal right of control. However, this term shall include all 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 "School employee." As defined in 24 Pa.C.S. § 8102 (relating
5 to definitions).

6 "Student." An individual who is:

7 (1) instructed by a school employee;

8 (2) supervised by a school employee;

9 (3) counseled by a school employee; or

10 (4) mentored by a school employee.

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

13 Section 3. Disqualification and forfeiture of benefits.

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

23 (b) [The benefits shall be forfeited upon entry of a plea of
24 guilty or no defense or upon initial conviction and no payment
25 or partial payment shall be made during the pendency of an
26 appeal. If] The benefits shall be immediately forfeited upon the
27 public official's or public employee's entry of a plea of guilty
28 or no contest or upon initial entry of a jury verdict or
29 judicial order of guilty, with respect to any crimes related to
30 public office or public employment. The forfeiture shall not be

1 stayed or affected by pendency of an appeal or collateral attack
2 on the plea, verdict or order, regardless of whether a court has
3 entered or stayed the sentence pending the appeal or collateral
4 attack. If a plea, verdict or order is vacated and a verdict of
5 not guilty is rendered or the indictment or criminal information
6 finally dismissed, then the public official or public employee
7 shall be reinstated as a member of the pension fund or system
8 and shall be entitled to all benefits including those accruing
9 during the period of forfeiture if any. Such [conviction or]
10 plea, verdict or order shall be deemed to be a breach of a
11 public officer's or public employee's contract with his
12 employer.

13 * * *

14 (d) The appropriate [retirement board] benefits
15 administrator may retain a member's contributions and interest
16 thereon for the purpose of paying any fine imposed upon the
17 member of the fund by a court of competent jurisdiction, or for
18 the repayment of any funds misappropriated by such member from
19 the Commonwealth or any political subdivision.

20 * * *

21 Section 4. Restitution for monetary loss.

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

1 complete 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] Upon the finding of guilty of a
7 public official or public employee, or upon the entry of a plea
8 of guilty or no contest in any court of record by a public
9 official or public employee, the court shall notify the
10 appropriate benefits administrator of such finding or entrance
11 of plea. UNTIL RESTITUTION IS DETERMINED BY A COURT, THE <--
12 APPROPRIATE BENEFITS ADMINISTRATOR SHALL NOT MAKE PAYMENT OF ANY
13 REFUND OF CONTRIBUTIONS APPLIED FOR AFTER THE DATE OF SUCH
14 FINDING OR ENTRY TO THE PUBLIC OFFICIAL OR PUBLIC EMPLOYEE UNTIL
15 THE COURT NOTIFIES THE APPROPRIATE BENEFITS ADMINISTRATOR THAT
16 NO RESTITUTION IS DUE. The appropriate benefits administrator,
17 upon being served with a copy of the court's order, shall pay
18 over all such pension benefits, contributions or other benefits
19 to the extent necessary to satisfy the order of restitution.

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

21 [Section 7. Retroactively.

22 The provisions of this act shall be retroactive to December
23 1, 1972.]

24 ~~Section 4. The General Assembly finds and declares as~~ <--
25 ~~follows:~~

26 ~~(1) This section applies to the following provisions:~~

27 ~~(i) The editorial change in the second paragraph of~~
28 ~~the definition of "crimes related to public office or~~
29 ~~public employment" in section 2 of the act.~~

30 ~~(ii) The addition of the definitions of "school~~

~~employee" and "student" in section 2 of the act.~~

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

Section ~~5~~ 4. The following provisions apply to crimes related to public office or public employment committed on or after the effective date of this section: <--

(1) The amendment or addition of the definitions of "benefits administrator," "crimes related to public office or public employment" except for the editorial change in the second paragraph of the definition, ~~and~~ "public official" or "public employee" AND "STUDENT" in section 2 of the act. <--

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

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

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

Section ~~6~~ 5. This act shall take effect immediately. <--