

No. 1978-140

## AN ACT

SB 578

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.

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

Section 1. Short title.

This act shall be known and may be cited as the "Public Employee Pension Forfeiture Act."

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

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

- (1) § 3922 (relating to theft by deception);
- (2) § 3923 (relating to theft by extortion);
- (3) § 3926 (relating to theft of services);
- (4) § 3927 (relating to theft by failure to make required disposition of funds received). The provisions of paragraphs (1) through (4) shall only apply when the criminal culpability reaches the level of a misdemeanor of the first degree or higher;
- (5) § 4101 (relating to forgery);
- (6) § 4104 (relating to tampering with records or identification);
- (7) § 4113 (relating to misapplication of entrusted property and property of government or financial institutions) when the criminal culpability reaches the level of misdemeanor of the second degree;
- (8) § 4701 (relating to bribery in official and political matters);
- (9) § 4702 (relating to threats and other improper influence in official and political matters);
- (10) § 4902 (relating to perjury);
- (11) § 4903(a) (relating to false swearing);
- (12) § 4904 (relating to unsworn falsification to authorities);
- (13) § 4906 (relating to false reports to law enforcement authorities);
- (14) § 4907 (relating to tampering with witnesses and informants);

- (15) § 4908 (relating to retaliation against witness or informant);
- (16) § 4909 (relating to witness or informant taking bribe);
- (17) § 4910 (relating to tampering with or fabricating physical evidence);
- (18) § 4911 (relating to tampering with public records or information);
- (19) § 5101 (relating to obstructing administration of law or other governmental function);
- (20) § 5301 (relating to official oppression);
- (21) § 5302 (relating to speculating or wagering on official action or information); and
- (22) Article III, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

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.

"Political subdivision." Any county, city, borough, incorporated town, township, school district, vocational school district, intermediate unit, municipal authority, home rule, optional plan or optional charter municipality, and any agencies, boards, commissions, committees, departments, instrumentalities, or entities thereof designated to act in behalf of a political subdivision either by statute or appropriation.

"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 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 or in part by the Commonwealth or any political subdivision. For the purposes of this act such persons are deemed to be engaged in public employment.

Section 3. Disqualification and forfeiture of benefits.

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

(b) The benefits shall be forfeited upon entry of a plea of guilty or no defense or upon initial conviction and no payment or partial payment shall be made during the pendency of an appeal. If a verdict of not guilty is rendered or the indictment or criminal information finally dismissed, then the public official or public employee shall be reinstated as a member of the pension fund or system and shall be entitled to all benefits including those accruing during the period of forfeiture if any. Such conviction or plea shall be deemed to be a breach of a public officer's or public employee's contract with his employer.

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

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

(e) Notwithstanding any other provision of this act, the State Employees' Retirement Board shall not disburse any funds to any person who has forfeited their right to benefits until the Auditor General and the Attorney General have determined and certified that there has been no loss to the Commonwealth as a result of the conduct that resulted in forfeiture of benefits. If there is a loss to the Commonwealth, the board shall pay the amount of the loss to the State Treasurer from the member's contributions and the interest thereon.

#### Section 4. Restitution for monetary loss.

(a) Whenever any public official or employee who is a member of any pension system funded by public moneys is convicted or pleads guilty or pleads no defense in any court of record to any crime related to a public office or public employment, the court shall order the defendant to make complete and full restitution to the Commonwealth or political subdivision of any monetary loss incurred as a result of the criminal offense.

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

(c) Notwithstanding any law or provision of law exempting the pension account or benefits of any public official or public employee from garnishment or attachment, whenever the court shall order restitution or establish the amount of restitution due after petition, all sums then credited to the defendant's account or payable to the defendant including the contributions shall be available to satisfy such restitution order.

(d) The retirement board, administrator of the pension fund or employer of the defendant, upon being served with a copy of the court's

order, shall pay over all such pension benefits, contributions or other benefits to the extent necessary to satisfy the order of restitution.

**Section 5. Repealer.**

Section 8533 (relating to taxation, attachment and assignment of funds) of Title 24 (Education), section 8124(b)(1), (2), (3), (4), (5) and (6) (relating to exemption of particular property) of Title 42 (Judiciary and Judicial Procedure) and section 5953(a) (relating to taxation, attachment and assignment of funds) of Title 71 (State Government) of the Pennsylvania Consolidated Statutes are repealed to the extent that they are inconsistent with this act.

All other acts or parts of acts inconsistent with the provisions of this act are repealed to the extent of their inconsistency.

**Section 6. Severability.**

The provisions of this act shall be severable. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the act are so essentially and inseparable connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 7. Retroactively.**

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

**Section 8. Effective date.**

This act shall take effect immediately.

Office of the Secretary of the Commonwealth

July 8, 1978

I do certify that the above bill, entitled "An act providing for the forfeiture of the pensions of certain public employees and authorizing that 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," was presented to the Governor on the twenty-eighth day of June, one thousand nine hundred and seventy-eight, and was not returned within ten days after it had been presented to him, wherefore it has, agreeably to the Constitution of this Commonwealth, become a law in like manner as if he had signed it.

BARTON A. FIELDS  
Secretary of the Commonwealth

*Note.* The date of final enactment of Act No. 1978-140 is July 8, 1978.