

No. 2019-1

## AN ACT

SB 113

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 providing for definitions, for disqualification and forfeiture of benefits and for restitution for monetary loss; and repealing a retroactivity provision.

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

Section 1. The definitions of "crimes related to public office or public employment" and "public official" or "public employee" in section 2 of the act of July 8, 1978 (P.L.752, No.140), known as the Public Employee Pension Forfeiture Act, are amended and the section is amended by adding a definition to read:

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:

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

"Crimes related to public office or public employment." Any of the criminal offenses as set forth in the following provisions of 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:

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

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

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

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

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

Section 4101 (relating to forgery).

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

Section 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.

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

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

**[Section 4902 (relating to perjury).]**

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

Section 4904 (relating to unsworn falsification to authorities).

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

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

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

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

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

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

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

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

\* \* \*

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

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] found guilty of a crime related to public office or public employment** or pleads guilty or **[no defense] nolo contendere** 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] *The benefits shall be forfeited retroactive to the date of the public official's or public employee's plea of guilty or nolo contendere or upon initial entry of a jury verdict of guilty or judicial order of guilty, with respect to any crimes related to public office or public employment. The forfeiture shall not be stayed or affected by pendency of an appeal or collateral attack on the plea, verdict or order, regardless of whether a court has entered or stayed the sentence pending the appeal or collateral attack. If a plea, verdict or order is vacated and*** 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, **verdict or order** shall be deemed to be a breach of a public officer's or public employee's contract with his employer.

\* \* \*

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

\* \* \*

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

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

Section 4. Restitution for monetary loss.

(a) Whenever any public official or **public** employee who is a member of any pension system funded by public moneys **[is convicted or pleads guilty or pleads no defense] enters a plea of guilty or nolo contendere in any court of record to any crime related to a public office or public employment and which plea is accepted by the court or whenever there is initial entry of a jury verdict of guilty or judicial order of guilty against the public official or public employee** 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.

\* \* \*

(d) [The retirement board, administrator of the pension fund or employer of the defendant] *Until restitution is determined by a court, the appropriate benefits administrator shall not make payment of any refund of contributions applied for after the date of such finding or entry to the public official or public employee until the court notifies the appropriate benefits administrator that no restitution is due. The court shall notify the appropriate benefits administrator if restitution is or is not ordered and the amount, if applicable. The appropriate benefits administrator, 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 4. Section 7 of the act is repealed:

**[Section 7. Retroactively.**

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

Section 5. 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" and "public official" or "public employee" 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. This act shall take effect as follows:

- (1) The addition of section 3(f) of the act shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 28th day of March, A.D. 2019

TOM WOLF