

416

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. KRUEGER, DUANE -- read twice and ordered printed,
and when printed to be committed to the Committee on Civil Service and
Pensions

AN ACT to amend the retirement and social security law, in relation to
forfeiture of pension rights or retirement benefits upon conviction of
a felony related to public employment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The retirement and social security law is amended by adding
2 a new article 3-B to read as follows:

3 ARTICLE 3-B

4 PENSION FORFEITURE FOR PUBLIC CORRUPTION ACT

5 SECTION 156. SHORT TITLE.

6 157. DEFINITIONS.

7 158. PENSION FORFEITURE.

8 159. MISCELLANEOUS.

9 S 156. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
10 THE "PENSION FORFEITURE FOR PUBLIC CORRUPTION ACT".

11 S 157. DEFINITIONS. THE FOLLOWING WORDS AND PHRASES, AS USED IN THIS
12 ARTICLE, SHALL HAVE THE FOLLOWING MEANINGS, UNLESS A DIFFERENT MEANING
13 IS PLAINLY REQUIRED BY THE CONTEXT:

14 1. "DEFENDANT" SHALL MEAN A PERSON AGAINST WHOM A FORFEITURE ACTION IS
15 COMMENCED.

16 2. "DESIGNATED FELONY OFFENSE" SHALL MEAN: (A) ANY FELONY OFFENSE SET
17 FORTH IN THE PENAL LAW; (B) A CONSPIRACY TO COMMIT ANY FELONY OFFENSE
18 SET FORTH IN THE PENAL LAW; OR (C) ANY CRIMINAL OFFENSE COMMITTED IN ANY
19 OTHER STATE, DISTRICT, OR TERRITORY OF THE UNITED STATES AND CLASSIFIED
20 AS A FELONY THEREIN, WHICH IF COMMITTED WITHIN THIS STATE, WOULD CONSTI-
21 TUTE AN OFFENSE DESIGNATED IN PARAGRAPH (A) OR (B) OF THIS SUBDIVISION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 3. "COMPTROLLER" SHALL MEAN THE COMPTROLLER OF THE STATE OF NEW YORK
2 IN HIS OR HER CAPACITY AS ADMINISTRATIVE HEAD OF THE NEW YORK STATE AND
3 LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL
4 POLICE AND FIRE RETIREMENT SYSTEM.

5 4. "MEMBER" SHALL MEAN A MEMBER OF THE NEW YORK STATE AND LOCAL
6 EMPLOYEES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND
7 FIRE RETIREMENT SYSTEM WHO JOINED SUCH SYSTEM ON OR AFTER THE EFFECTIVE
8 DATE OF THIS ARTICLE.

9 5. "RETIRED MEMBER" SHALL MEAN A PERSON WHO IS RETIRED FROM AND WHO IS
10 RECEIVING A RETIREMENT ALLOWANCE FROM A RETIREMENT SYSTEM AND WHO HAD
11 JOINED SUCH SYSTEM ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

12 6. "RETIREMENT SYSTEM" SHALL MEAN THE NEW YORK STATE AND LOCAL EMPLOY-
13 EES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE
14 RETIREMENT SYSTEM.

15 S 158. PENSION FORFEITURE. NOTWITHSTANDING ANY OTHER PROVISION OF
16 GENERAL, SPECIAL OR LOCAL LAW, RULE OR REGULATION TO THE CONTRARY:

17 1. IN THE CASE OF A MEMBER OR RETIRED MEMBER WHO IS CONVICTED OF ANY
18 DESIGNATED FELONY OFFENSE SET FORTH IN PARAGRAPH (A) OR (B) OF SUBDIVI-
19 SION TWO OF SECTION ONE HUNDRED FIFTY-SEVEN OF THIS ARTICLE, THE COMMIS-
20 SION OF WHICH IS RELATED TO THE PERFORMANCE OR FAILURE TO PERFORM SUCH
21 MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND RESPONSIBILITIES, AN
22 ACTION MAY BE COMMENCED IN SUPREME COURT BY THE DISTRICT ATTORNEY HAVING
23 JURISDICTION OVER THE OFFENSE FOR THE FORFEITURE OF ALL OR A PORTION OF
24 THOSE RIGHTS AND BENEFITS TO WHICH SUCH PERSON IS OR WILL BE ENTITLED AS
25 A MEMBER OR RETIRED MEMBER PROVIDED THAT ANY CONTRIBUTIONS MADE BY THE
26 OFFICIAL TO HIS OR HER RETIREMENT SYSTEM SHALL NOT BE SUBJECT TO FORFEI-
27 TURE, BUT SHALL BE RETURNED TO SUCH OFFICIAL. SUCH ACTION SHALL BE
28 COMMENCED WITHIN SIX MONTHS OF SUCH CONVICTION. FOR PURPOSES OF THIS
29 ARTICLE, A DESIGNATED FELONY OFFENSE IS RELATED TO THE PERFORMANCE OR
30 FAILURE TO PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND
31 RESPONSIBILITIES IF IT: (A) CONSTITUTED A MATERIAL VIOLATION OF SUCH
32 MEMBER OR RETIRED MEMBER'S DUTIES AND RESPONSIBILITIES AS A PUBLIC SERV-
33 ANT; OR (B) EVEN THOUGH COMMITTED OUTSIDE THE SCOPE OF SUCH MEMBER'S
34 OFFICIAL DUTIES OR RESPONSIBILITIES, INVOLVED ACTIONS OR CONDUCT BY
35 WHICH SUCH MEMBER OR RETIRED MEMBER INDICATED OR CONVEYED THAT HE OR SHE
36 WAS ACTING WITH THE AUTHORITY OF, OR UNDER COLOR OF THE AUTHORITY OF,
37 ANY GOVERNMENTAL ENTITY.

38 2. WHERE THE ATTORNEY GENERAL FINDS THAT A MEMBER OR A RETIRED MEMBER
39 HAS BEEN CONVICTED OF A DESIGNATED FELONY OFFENSE AS DEFINED IN PARA-
40 GRAPH (C) OF SUBDIVISION TWO OF SECTION ONE HUNDRED FIFTY-SEVEN OF THIS
41 ARTICLE, THE COMMISSION OF WHICH IS RELATED TO THE PERFORMANCE OR FAIL-
42 URE TO PERFORM SUCH MEMBER OR RETIRED MEMBER'S OFFICIAL DUTIES AND
43 RESPONSIBILITIES, AN ACTION MAY BE COMMENCED IN SUPREME COURT BY THE
44 ATTORNEY GENERAL FOR THE FORFEITURE OF ALL OR A PORTION OF THOSE RIGHTS
45 AND BENEFITS TO WHICH SUCH PERSON IS OR WILL BE ENTITLED AS A MEMBER OR
46 RETIRED MEMBER. SUCH ACTION SHALL BE COMMENCED WITHIN ONE YEAR OF SUCH
47 CONVICTION.

48 3. PRIOR TO COMMENCEMENT OF SUCH ACTION DESCRIBED IN SUBDIVISION ONE
49 OR TWO OF THIS SECTION, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL,
50 AS THE CASE MAY BE, SHALL PROVIDE NOTICE TO THE COMPTROLLER STATING THAT
51 HE OR SHE HAS REASON TO BELIEVE THAT THE PERSON CONVICTED COMMITTED THE
52 FELONY RELATED TO HIS OR HER OFFICIAL DUTIES AND RESPONSIBILITIES.
53 WITHIN TWENTY DAYS OF RECEIPT OF SUCH NOTICE, THE COMPTROLLER SHALL
54 SUBMIT A NOTICE OF APPLICABILITY TO THE DISTRICT ATTORNEY OR THE ATTOR-
55 NEY GENERAL AS THE CASE MAY BE. THE NOTICE OF APPLICABILITY SHALL
56 CONTAIN A STATEMENT SPECIFYING WHETHER THE PERSON CONVICTED IS OR HAS

1 BEEN A MEMBER OR RETIRED MEMBER OF THE NEW YORK STATE AND LOCAL EMPLOY-
2 EES' RETIREMENT SYSTEM OR THE NEW YORK STATE AND LOCAL POLICE AND FIRE
3 RETIREMENT SYSTEM AND SHALL DESCRIBE THE RIGHTS AND BENEFITS TO WHICH
4 SUCH PERSON IS OR WILL BE ENTITLED FROM SUCH PUBLIC RETIREMENT SYSTEM.

5 4. NO FORFEITURE ACTION MAY BE COMMENCED BY THE DISTRICT ATTORNEY OR
6 THE ATTORNEY GENERAL UNTIL RECEIPT OF THE NOTICE OF APPLICABILITY AS SET
7 FORTH IN SUBDIVISION THREE OF THIS SECTION. IN DETERMINING WHETHER TO
8 SEEK FORFEITURE OF A PORTION, RATHER THAN ALL, OF SUCH RETIREMENT BENE-
9 FITS, THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL MAY CONSIDER MITI-
10 GATING FACTORS INCLUDING, BUT NOT LIMITED TO: THE NATURE AND SERIOUSNESS
11 OF THE OFFENSE COMMITTED IN RELATION TO THE AMOUNT OF THE FORFEITURE
12 PENALTY; WHETHER THE DEFENDANT'S CONDUCT IN COMMITTING THE OFFENSE WAS
13 WILLFUL OR MALICIOUS; WHETHER THE DEFENDANT MADE ANY SUBSTANTIAL GOOD
14 FAITH EFFORTS TO PREVENT OR MITIGATE THE HARM CAUSED BY THE OFFENSE;
15 WHETHER THE DEFENDANT'S PARTICIPATION IN THE CRIME WAS UNDER DURESS,
16 COERCION OR INDUCED BY OTHERS; THE IMPACT OF THE CRIME ON THE STATE OR
17 LOCAL GOVERNMENT AND THE NUMBER OF YEARS OF THE DEFENDANT'S PUBLIC
18 SERVICE PERFORMED WITHOUT CRIMINAL CONDUCT; THE PECUNIARY BENEFIT TO THE
19 DEFENDANT FROM THE CRIME; AND WHETHER AND TO WHAT EXTENT THE DEFENDANT'S
20 FAMILY IS DEPENDENT UPON THE DEFENDANT'S PRESENT AND FUTURE RETIREMENT
21 BENEFITS.

22 5. UPON MOTION BY THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, AS
23 THE CASE MAY BE, MADE UPON COMMENCEMENT OF OR AT ANY TIME DURING THE
24 PENDENCY OF A FORFEITURE ACTION, PURSUANT TO THE PROCEDURE SET FORTH IN
25 SUBDIVISION ONE OF SECTION SIXTY-THREE HUNDRED ELEVEN OR SECTION SIXTY-
26 THREE HUNDRED THIRTEEN OF THE CIVIL PRACTICE LAW AND RULES, THE COURT
27 MAY ISSUE A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY INJUNCTION
28 PROHIBITING THE DEFENDANT FROM RECEIVING ANY RIGHTS OR BENEFITS FROM THE
29 APPROPRIATE RETIREMENT SYSTEM. A PRELIMINARY INJUNCTION MAY BE GRANTED
30 WHERE THE COURT FINDS THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
31 DISTRICT ATTORNEY OR ATTORNEY GENERAL WILL PREVAIL ON THE ISSUE OF
32 FORFEITURE. NO SHOWING OF IRREPARABLE HARM SHALL BE REQUIRED. THE COURT
33 MAY NOT CONSIDER ON SUCH MOTION ANY ISSUES PRESENTED TO THE COURT WHICH
34 HEARD THE CRIMINAL ACTION IN WHICH THE DEFENDANT WAS CONVICTED OR WHICH
35 ARISE OUT OF SUCH CRIMINAL ACTION AND MAY BE PRESENTED ON APPEAL.

36 6. ALL DEFENDANTS IN A FORFEITURE ACTION BROUGHT PURSUANT TO THIS
37 ARTICLE SHALL HAVE THE RIGHT TO TRIAL BY JURY ON ANY ISSUE OF FACT.

38 7. THE BURDEN OF PROOF SHALL BE UPON THE DISTRICT ATTORNEY OR THE
39 ATTORNEY GENERAL, AS THE CASE MAY BE, TO PROVE BY CLEAR AND CONVINCING
40 EVIDENCE THE FACTS NECESSARY TO ESTABLISH A CLAIM OF PENSION FORFEITURE.

41 8. AT ANY TIME DURING THE PENDENCY OF A FORFEITURE ACTION, THE COURT
42 MAY DISMISS THE ACTION IF IT FINDS THAT SUCH RELIEF IS WARRANTED BY THE
43 EXISTENCE OF SOME COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE
44 INCLUDING, BUT NOT LIMITED TO, ONE OR MORE OF THE MITIGATING FACTORS SET
45 FORTH IN SUBDIVISION FOUR OF THIS SECTION, OR OTHER INFORMATION OR
46 EVIDENCE WHICH DEMONSTRATES THAT SUCH FORFEITURE WOULD NOT SERVE THE
47 ENDS OF JUSTICE. THE COURT SHALL ISSUE A WRITTEN DECISION STATING THE
48 BASIS FOR AN ORDER ISSUED PURSUANT TO THIS SUBDIVISION.

49 9. (A) UPON A FINDING BY THE COURT THAT THE DEFENDANT HAS COMMITTED A
50 FELONY IN CONNECTION WITH HIS OR HER OFFICIAL DUTIES AND RESPONSIBIL-
51 ITIES IN THIS STATE, THE COURT SHALL ISSUE AN ORDER TO THE APPROPRIATE
52 RETIREMENT SYSTEM FOR: (I) THE FORFEITURE OR RECOUPMENT OF ALL OR A
53 PORTION OF THE DEFENDANT'S RIGHTS AND BENEFITS AS A MEMBER OR RETIRED
54 MEMBER OF SUCH SYSTEM; (II) THE RECOUPMENT OF ALL OR A PORTION OF THE
55 RETIREMENT BENEFITS PAID TO THE DEFENDANT; AND (III) THE REFUND TO THE
56 DEFENDANT OF ANY CONTRIBUTIONS MADE BY THE DEFENDANT TO THE RETIREMENT

1 SYSTEM FOR ANY PERIOD FOR WHICH THE DEFENDANT'S RIGHTS AND BENEFITS AS A
2 MEMBER OR RETIRED MEMBER OF SUCH RETIREMENT SYSTEM HAVE BEEN ORDERED
3 FORFEIT.

4 (B) IN DETERMINING THE EXTENT OF THE FORFEITURE OR RECOUPMENT THAT IS
5 WARRANTED, THE COURT MAY CONSIDER ONE OR MORE OF THE MITIGATING FACTORS
6 SET FORTH IN SUBDIVISION FOUR OF THIS SECTION. ALL ORDERS AND FINDINGS
7 MADE BY THE COURT PURSUANT TO THIS SECTION SHALL BE SERVED UPON THE
8 COMPTROLLER.

9 10. UPON A FINAL DETERMINATION THAT REVERSES OR VACATES THE CONVICTION
10 OR CONVICTIONS OF A DESIGNATED OFFENSE OR OFFENSES, THE MEMBER OR
11 RETIRED MEMBER WHO HAS FORFEITED RETIREMENT RIGHTS AND BENEFITS PURSUANT
12 TO THIS SECTION SHALL HAVE SUCH RIGHTS AND BENEFITS RETROACTIVELY
13 RESTORED UPON APPLICATION TO THE COURT WITH JURISDICTION OVER THE
14 FORFEITURE ACTION, REGARDLESS OF ANY TEMPORARY RESTRAINING ORDER OR
15 PRELIMINARY INJUNCTION WHICH MAY BE OUTSTANDING OR ORDER WHICH MAY HAVE
16 BEEN ISSUED. SUCH COURT, UPON FINDING THAT SUCH A FINAL DETERMINATION
17 HAS OCCURRED, SHALL ISSUE AN ORDER RETROACTIVELY RESTORING SUCH RIGHTS
18 AND BENEFITS, TOGETHER WITH SUCH OTHER RELIEF DEEMED APPROPRIATE. AS A
19 CONDITION TO FULL RESTORATION OF RIGHTS AND BENEFITS AS PROVIDED IN THIS
20 SUBDIVISION, THE MEMBER OR RETIRED MEMBER SHALL REIMBURSE THE RETIREMENT
21 SYSTEM FOR ANY CONTRIBUTIONS THAT WERE REFUNDED TO THE MEMBER OR RETIRED
22 MEMBER PURSUANT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION NINE
23 OF THIS SECTION.

24 11. EXCEPT AS OTHERWISE PROVIDED BY THIS ARTICLE, THE CIVIL PRACTICE
25 LAW AND RULES SHALL GOVERN THE PROCEDURE IN ACTIONS COMMENCED UNDER THIS
26 ARTICLE, EXCEPT WHERE THE ACTION IS REGULATED BY ANY INCONSISTENT
27 PROVISIONS OF THIS SECTION. IN SUCH ACTIONS, THE COURT MAY NOT CONSIDER
28 ANY ISSUES PRESENTED TO THE COURT WHICH HEARD THE CRIMINAL ACTION IN
29 WHICH THE DEFENDANT WAS CONVICTED OR WHICH ARISE OUT OF SUCH CRIMINAL
30 ACTION AND MAY BE PRESENTED ON APPEAL.

31 S 159. MISCELLANEOUS. THE REMEDIES PROVIDED FOR IN THIS ARTICLE ARE
32 NOT INTENDED TO SUBSTITUTE FOR, LIMIT OR SUPERSEDE THE LAWFUL AUTHORITY
33 OF ANY PUBLIC OFFICER, AGENCY OR OTHER PERSON TO ENFORCE ANY OTHER RIGHT
34 OR REMEDY PROVIDED FOR BY LAW.

35 S 2. This act shall take effect immediately.