S T A T E O F N E W Y O R K

3152

2015-2016 Regular Sessions

I N S E N A T E

February 3, 2015

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to creating a civil course of action to recover the value of any benefit received from any public retirement system or retirement plan by an elected official who has been convicted of certain felonies

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

Section 1. Section 1310 of the civil practice law and rules is amended by adding a new subdivision 2-a to read as follows:

2-A. "PROCEEDS OF A VIOLATION OF THE PUBLIC TRUST" MEANS AN AMOUNT EQUIVALENT TO THE MONETARY VALUE OF ANY BENEFIT RECEIVED FROM ANY PUBLIC RETIREMENT SYSTEM OR RETIREMENT PLAN BY AN ELECTED OFFICIAL WHO HAS COMMITTED A FELONY CRIME AS DEFINED IN SUBDIVISION 5-A OF THIS SECTION.

S 2. Section 1310 of the civil practice law and rules is amended by adding a new subdivision 5-a to read as follows:

5-A. "POST-CONVICTION FORFEITURE CRIME INVOLVING AN ELECTED OFFICIAL" MEANS:

(A) ANY FELONY FOR COMMITTING, AIDING OR ABETTING A LARCENY OF PUBLIC FUNDS FROM THE STATE OR A MUNICIPALITY;

(B) ANY FELONY COMMITTED IN DIRECT CONNECTION WITH SERVICE AS AN ELECTED OFFICIAL; OR

(C) ANY FELONY COMMITTED BY SUCH PERSON WHO, WITH THE INTENT TO DEFRAUD, REALIZES OR OBTAINS, OR ATTEMPTS TO REALIZE OR OBTAIN, A PROFIT, GAIN OR ADVANTAGE FOR HIMSELF OR HERSELF OR FOR SOME OTHER PERSON, THROUGH THE USE OR ATTEMPTED USE OF THE POWER, RIGHTS, PRIVILEGES OR DUTIES OF HIS OR HER POSITION AS AN ELECTED OFFICIAL.

S 3. The opening paragraph of subdivision 1 of section 1311 of the civil practice law and rules, as amended by chapter 655 of the laws of 1990, is amended to read as follows:

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

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A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime. A CIVIL ACTION MAY BE COMMENCED BY THE APPROPRIATE CLAIMING AUTHORITY AGAINST AN ELECTED OFFICIAL TO RECOVER A MONEY JUDGMENT WHICH CONSTITUTES THE PROCEEDS OF A VIOLATION OF THE PUBLIC TRUST. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three hereof shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise specially provided by statute, the proceedings under this article shall be governed by this chapter. An action under this article is not a criminal proceeding and may not be deemed to be a previous prosecution under article forty of the criminal procedure law. AN ACTION UNDER THIS ARTICLE AGAINST AN ELECTED OFFICIAL WHO IS NOT SUBJECT TO THE PROVISIONS OF ARTICLE 3-B OF THE RETIREMENT AND SOCIAL SECURITY LAW SHALL NOT IN ANY WAY BE DEEMED TO IMPEDE OR IMPAIR ANY RIGHTS OR PRIVILEGES AFFORDED TO SUCH ELECTED OFFICIAL AS A MEMBER OF ANY PUBLIC RETIREMENT SYSTEM OR RETIREMENT PLAN.

S 4. Subdivision 1 of section 1311 of the civil practice law and rules is amended by adding a new paragraph (a-1) to read as follows:

(A-1) ACTIONS RELATING TO POST-CONVICTION FORFEITURE CRIMES INVOLVING ELECTED OFFICIALS. AN ACTION RELATING TO A POST-CONVICTION FORFEITURE CRIME INVOLVING AN ELECTED OFFICIAL MUST BE GROUNDED UPON A CONVICTION OF A FELONY DEFINED IN SUBDIVISION FIVE-A OF SECTION ONE THOUSAND THREE HUNDRED TEN OF THIS ARTICLE, OR UPON CRIMINAL ACTIVITY ARISING FROM A COMMON SCHEME OR PLAN OF WHICH SUCH A CONVICTION IS A PART, OR UPON A COUNT OF AN INDICTMENT OR INFORMATION ALLEGING A FELONY WHICH WAS DISMISSED AT THE TIME OF A PLEA OF GUILTY TO A FELONY IN SATISFACTION OF SUCH COUNT. A COURT MAY NOT GRANT FORFEITURE UNTIL SUCH CONVICTION HAS OCCURRED. HOWEVER, AN ACTION MAY BE COMMENCED, AND A COURT MAY GRANT A PROVISIONAL REMEDY PROVIDED UNDER THIS ARTICLE, PRIOR TO SUCH CONVICTION HAVING OCCURRED. AN ACTION UNDER THIS PARAGRAPH MUST BE DISMISSED AT ANY TIME AFTER SIXTY DAYS OF THE COMMENCEMENT OF THE ACTION UNLESS THE CONVICTION UPON WHICH THE ACTION IS GROUNDED HAS OCCURRED, OR AN INDICTMENT OR INFORMATION UPON WHICH THE ASSERTED CONVICTION IS TO BE BASED IS PENDING IN A SUPERIOR COURT. AN ACTION UNDER THIS PARAGRAPH SHALL BE STAYED DURING THE PENDENCY OF A CRIMINAL ACTION WHICH IS RELATED TO IT; PROVIDED, HOWEVER, THAT SUCH STAY SHALL NOT PREVENT THE GRANTING OR CONTINUANCE OF ANY PROVISIONAL REMEDY PROVIDED UNDER THIS ARTICLE OR ANY OTHER PROVISIONS OF LAW.

S 5. This act shall take effect immediately.